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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Additional information submitted by States parties to the Covenant following the consideration of their reports by the Committee on Economic, Social and Cultural Rights

Addendum

EL SALVADOR*

[11 August 1998]

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* At its 15th, 16th and 18th meetings held on 9 and 10 May 1996 (E/C.12/1996/SR.15, 16 and 18), the Committee considered the initial report of El Salvador on the rights referred to in articles 1 to 15 of the Covenant (E/1990/5/Add.25).

The Government of El Salvador submitted additional information relating to the consideration of that report by the Committee, which is reproduced in the present document.

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1. Principal demographic indicators (multi-purpose household survey)

Demographic indicators (1998 figures)

Estimates and projections 1995-2005

Total population	6,031,326
Urban	3,485,465
Rural	2,545,861
Overall rate of increase	2.1
Total fertility rate	3.2
Life expectancy at birth	
Total	69.4
Males	66.5
Females	72.5
Infant mortality rate (per 1,000 live births)	
Total	32.0
Males	34.9
Females	29

See annex 1. 1/

2. Indigenous peoples: figures, numbers and percentage

Population of El Salvador: 5,396,000

Estimated indigenous population: 494,117

3. The criteria used for the identification of aboriginal populations are their outstanding cultural features, such as the existence of traditional brotherhoods and dances, popular art, religion, traditions and customs.

Background

4. As part of its policies concerning the indigenous peoples, the Salvadoran Government has introduced legislation on the revival and protection of the vernacular languages. Article 62 of the Constitution of the Republic of El Salvador states: "The indigenous languages spoken within the national territory form part of the national heritage and shall be the subject of preservation, dissemination and respect".

1/ The annexes are available for consultation in the secretariat's files.

5. From 1988 to 1991, the National Department for Cultural Promotion and Dissemination conducted a pilot research project on the Nahuat language in the west of the country, with the support of the Inter-American Indian Institute. The outcome of this work was the publication of guides for the teaching of the Nahuat language and elementary textbooks for students.

6. Teaching projects in the Nahuat language were carried out in 16 primary schools, from the first to the sixth grade, in the departments of Sonsonati and Ahuatchapan from 1988 to 1991.

7. Four linguistic congresses were held in 1992, 1993, 1994 and 1996. The First Congress (1992) successfully set out to study the work of researchers on the Nahuat language and bring it to the notice of the people of El Salvador. At the Second Congress (1993), the research already conducted on the Nahuat language was presented to the Salvadoran community. An important task of the Third Congress (1994), apart from its study of language issues, was to consider the work conducted among the indigenous communities. One of the decisions of this Congress was to promote the creation, within the National Council for Culture and the Arts (CONCULTURA), of a body responsible for indigenous affairs.

8. In 1995, the Section for Indigenous Affairs was set up within the National Department for Cultural Promotion and Dissemination, with the aim of fulfilling the commitment towards the problems associated with the national indigenous communities.

9. The Fourth Linguistic Congress/First Symposium on the Indigenous Peoples of El Salvador and its Border Areas was held in 1996 with the participation of the country's indigenous organizations and with the support of national and foreign research workers and the community of El Salvador. The resolutions adopted by this latest and important Congress support the continuation of the work being carried out by the Government of El Salvador concerning indigenous peoples and policies on indigenous matters.

10. Policies of the Government of El Salvador concerning the indigenous peoples:

(a) Recognition of and support for the indigenous peoples and organizations of El Salvador;

(b) Research on problems associated with national indigenous peoples;

(c) Support for initiatives of the indigenous communities concerning development;

(d) Revival and dissemination of the indigenous languages of El Salvador;

(e) Publication of literature on indigenous matters.

11. In November 1997, the cooperation project on human rights in El Salvador of the United Nations High Commissioner for Human Rights published the Universal Declaration of Human Rights in Nahuat, together with a Braille version in Spanish.

Functions and organization of the Office of the Procurator for the Protection of Human Rights: background

12. The Office of the Procurator for the Protection of Human Rights was set up in 1992 in accordance with the Peace Agreements signed in Mexico by the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN); the establishment of the Office and the appointment of the Procurator are laid down in Chapter III of the Peace Agreements, which stipulates: "that the Procurator-General for the Protection of Human Rights shall be appointed within 90 days of the entry into force of the constitutional reform that originated in Mexico". The National Commission for the Consolidation of Peace was given the task of preparing the preliminary draft of the organization act of the Office of the Procurator for the Protection of Human Rights; this bill will establish appropriate ways and means of putting into effect the firm commitment reached by the parties in the course of the negotiations to identify and eliminate whatever groups may be perpetrating systematic violations of human rights, especially arbitrary arrest, abductions and executions, together with other forms of infringement of the individual's liberty, integrity and security. The agreement includes the commitment to identify and to close down and dismantle all clandestine prisons or places of detention. Moreover, the parties agree to give maximum priority to the investigation of cases of this kind, subject to inspection by the United Nations Observer Mission in El Salvador.

13. As part of the constitutional reform, article 194 of the Constitution was amended to include the Office of the Procurator for the Protection of Human Rights within the Department of Public Prosecutions, together with the Office of the Attorney-General of the Republic and the Office of the Prosecutor General of the Republic. The same article stipulates that the Procurator for the Protection of Human Rights will have the following powers:

(a) Ensure the observance of, and protect, the safeguards of human rights;

(b) Investigate cases of human rights violations, either of his own accord or on complaints received by him;

(c) Assist presumed victims of human rights violations;

(d) Initiate judicial or administrative proceedings for the protection of human rights;

(e) Monitor the situation of persons deprived of their freedom. He should be notified of all arrests and should ensure that the legal time limits for administrative detention are observed;

(f) Carry out any inspections he deems necessary in order to ensure respect for human rights;

(g) Monitor the conduct of the public administration towards individuals;

(h) Urge the branches of the State to undertake reforms for the advancement of human rights;

(i) Give advice concerning draft legislation that affects the exercise of human rights;

(j) Promote and propose any measures he deems necessary in order to prevent human rights violations;

(k) Formulate conclusions and recommendations, publicly or privately;

(l) Prepare and publish reports;

(m) Carry out a continuing programme of activities to foster awareness of and respect for human rights; and

(n) Any others assigned to him by the Constitution or the law.

14. The Procurator for the Protection of Human Rights may set up permanent area and local branches. At a later stage, Legislative Decree No. 163 was issued, whereby the Legislative Assembly of El Salvador, bearing in mind that the institutional post of Procurator for the Protection of Human Rights has been set up in accordance with articles 191, 192 and 194 of the Constitution and that powers have been assigned to that post in a desire to contribute to the restoration and strengthening of peace and the reconciliation of Salvadoran society, considers it necessary to enact legislative measures guaranteeing respect for human rights and, to ensure the fulfilment of the above-mentioned constitutional provisions, considers it essential to issue the law governing the organization and operation of the Office of the Procurator for the Protection of Human Rights.

15. The Office of the Procurator for the Protection of Human Rights Act (PDDH Act) stipulates that this institution is an integral part of the Department of Public Prosecutions. It is permanent and independent, with its own legal personality and administrative autonomy, and its purpose is to ensure that human rights are protected, promoted and taught and are unconditionally effective. Human rights are understood to be the civil, political, economic, social and cultural rights and the third generation of human rights set forth in the Constitution, the laws and the treaties in force, together with those contained in the declarations and principles approved by the United Nations or the Organization of American States (PDDH Act, art. 2).

16. The Office is headed by a Procurator for the Protection of Human Rights, who performs his or her duties throughout the country, either personally or through deputies (PDDH Act, art. 3).

17. The Procurator is elected by the Legislative Assembly by a two thirds majority of the elected deputies for a three-year term and may be re-elected.

In carrying out his or her duties, the Procurator is independent of any institution, organ or authority of the State and is subject only to the Constitution and the laws of the Republic (PDDH Act, art. 4).

18. The Procurator, in carrying out his or her duties, acts independently and may not be hindered or subjected to pressure by any authority. For the discharge of his or her duties the Procurator may ask the branches of the State, the civil, military or police authorities or officials and any other person for their assistance, cooperation, reports or opinions, and they are obliged to cooperate and to give the requests and recommendations of the Procurator their priority and immediate attention (PDDH Act, art. 10).

19. In addition to the powers referred to in article 194 of the Constitution, the Act assigns the following duties to the Procurator:

(a) Ensure strict compliance with the legal procedures and time limits for the various appeals he may lodge or the legal proceedings in which he may be involved;

(b) Ensure respect for the guarantees of due process and prevent detainees from being held incommunicado;

(c) Keep a central record of persons deprived of liberty and of authorized detention centres;

(d) Submit draft legislation for the promotion of human rights in El Salvador;

(e) Promote the signature of, ratification of or accession to international treaties on human rights;

(f) Issue statements of public censure against persons materially or intellectually responsible for human rights violations;

(g) Endeavour to reconcile persons whose rights have been infringed with the authorities or officials allegedly responsible, when the nature of the case so permits;

(h) Establish, promote and develop communication and cooperation links with governmental and inter-governmental agencies for the promotion and protection of human rights and with the various sectors of Salvadoran society;

(i) Issue the rules and regulations for the application of the Act and any rules of procedure that may be necessary;

(j) Appoint, discharge, grant leave to and accept the resignations of officials and employees of the Office;

(k) Prepare the annual budget proposal and submit it to the relevant authority; and

(l) Any other duties assigned to him or her by the Constitution or the law.

Organization of the Office of the Procurator

20. The Procurator for the Protection of Human Rights is the head or highest official of the Office; the powers of the Office are vested in a single individual. In addition to the head, the Office consists of:

(a) A Deputy Procurator for the Protection of Human Rights, who is hierarchically the second in command; he or she deputizes for the Procurator-General when the latter is absent or unavailable and occupies that position when it falls vacant until the new incumbent is elected;

(b) A Deputy Procurator for the Protection of the Rights of the Child, who is responsible for the protection, promotion, teaching and dissemination of the rights of the child;

(c) A Deputy Procurator for the Protection of the Rights of Women, who is responsible for the protection, promotion, teaching and dissemination of the rights of women;

(d) A Deputy Procurator for the Protection of the Rights of Older People, who is responsible for the protection, teaching and dissemination of the rights of older people; and

(e) A Deputy Procurator for the Protection of Environmental Rights, who is responsible for the protection, promotion, teaching and dissemination of environmental rights.

21. All these officials are appointed by the Procurator, are directly responsible to the Procurator, and carry out the functions assigned to them by law. The Act authorizes the Procurator to appoint such other deputy procurators as he deems necessary for the proper discharge of his constitutional and legal duties.

22. A general secretary, who is responsible for all the administrative work of the Office and for the dispatch of the official communications issued by the Procurator, is appointed directly by the Procurator and is directly responsible to him or her.

23. There are 13 area branches, each of which is run by an area representative who represents the Procurator in the territorial area assigned to him or her, exercises all the powers derived from the Procurator and carries out all the functions of protection, teaching, promotion and dissemination of human rights in his or her area.

24. The Act provides for the possibility of appointing local representatives and of appointing persons or committees to carry out one of the specific functions assigned to the Office of the Procurator, even if they do not form part of that Office (PDDH Act, arts. 14 and 17).

25. The Office of the Procurator has the following departments and sections:

Department of Complaints and Assessment

26. This is divided into two sections: the complaints section and the guidance and assistance section. The Department receives the complaints of human rights violations lodged by clients. It then assesses them to determine the type of violation and whether or not it is admissible; if the complaint is not admissible as a human rights violation, it is passed on to the guidance and assistance section, which advises clients as to which authority or institution they should approach to have their problem dealt with; depending on the circumstances, clients may be given assistance or guidance in their dealings with the respective authority or institution; finally, the complaint is sent for registration or verification and for assignment to the appropriate department for investigation of the case.

Department for the Monitoring of Proceedings

27. This Department is responsible for entering complaints in the information system, assigning a number and transmitting them to the appropriate department for investigation. It also monitors the situation or progress of the investigation, and records any movement concerning the complaint during the various stages of investigation and settlement. It keeps the statistical records of complaints received, the types of human rights violated, the acts of violation and those alleged to be responsible for the violations, whether at the national level or for each of the departments in which there are area offices. Complaints are recorded by means of an Information System for the Protection of Human Rights (SIGEP), whereby complaints can be entered by the area offices for transmission to the head office. The Department issues weekly, monthly and annual reports on complaints received, rights violated and those alleged to be responsible.

Investigations Department

28. This Department is responsible for coordinating and directing the investigations into alleged human rights violations; once the investigation of the complaint has been completed, a report on the case is prepared. During its investigations the Department may question witnesses, victims or alleged perpetrators of the act complained of, carry out inspections in the places where the human rights violation was committed and secure the adoption of any precautionary measure to prevent continued violation of the human right. It issues weekly and monthly reports, or such reports as the Procurator may request, concerning the investigation of cases and coordinates with all the area offices concerning the performance of measures which for territorial reasons have to be performed outside the jurisdiction of San Salvador. Once the investigations have been completed and the respective report has been prepared, the case is handed on for the preparation of a draft decision.

Department of Verification and Preventive Observation

29. This Department is divided into two sections: the verification section and the crisis prevention and control section. These are the sections responsible for dealing with all facts or actions subject to verification and preventive observation in the event of alleged human rights violations and for monitoring and observation in the event of public demonstrations, seizure of

public buildings, stoppage of work and similar actions, which by their nature may affect the human rights of the general public. In addition, they are responsible for monitoring the internal situation in all prisons, administrative and judicial detention centres and centres for young offenders throughout the country, for conducting the necessary studies and reviews so as to verify that human rights are enjoyed and applied within the country's prisons, and for monitoring the problems presented by prison inmates in order to verify the activities of the State officials who are responsible for responding to such problems. They have to issue regular reports on the cases in which they take action.

Department of Economic, Social and Cultural Rights

30. This Department was set up in 1995 in response to the need to strengthen the investigation of violations of economic, social and cultural human rights, which are among the principal concerns of the Procurator.

31. The Department is divided into two sections: a legal section and a multidisciplinary section. They conduct investigations of violations of the economic, social and cultural rights of individuals or groups, in accordance with the guide to the classification of human rights used by the Office of the Procurator; they prepare the final reports on the outcome of the investigations, which are subsequently passed on for preparation of draft decisions. In addition, they conduct general investigations on the national situation with regard to economic, social and cultural rights. They coordinate with the area offices on the performance of measures that have to be carried out at the area level or measures that the area offices need to have carried out at the central level. They issue regular reports on the progress of cases under investigation or on the outcome of the investigations.

Decision and Follow-up Department

32. This is divided into two sections: the decisions section and the follow-up section. It is responsible for drafting decisions concerning liability, non-liability and the willingness of the Procurator to use his good offices in respect of the completed investigations, including the investigations of cases relating to children, women, older people and the environment. These decisions are drawn up with the assistance of, or in consultation with, the appropriate specific Procurator's Office. They are then passed on to the Procurator for review, approval and signature. Once they have been signed by the Procurator, the decisions are announced by this Department and then passed to the responsible officials so that they can monitor action taken on the recommendations made.

Department of Information Technology

33. This consists of three areas: technical support, systems development and maintenance. It is responsible for managing the information technology network, electronic mail and the software used in the guidance system, and also for managing the software for the Information System for the Protection of Human Rights (SIGEP). It administers the databases of the offices of the Deputy Procurators. It provides the technical and logistic support required by all sections of the Office, and ensures the corrective and preventive

maintenance of all the Office's information technology equipment. It carries out the various training programmes for users of the SIGEP on the management of the databases and related software. It develops the various databases concerned with the protection of human rights.

Department of International Relations

34. This is responsible for providing assistance concerning the mechanisms for the international protection of human rights. It establishes links with governmental, intergovernmental and non-governmental agencies specializing in the protection of human rights. It liaises with the Ministry of Foreign Affairs on issues relating to the protection and promotion of human rights. It assists the other departments of the Office in cases requiring the performance of procedures of an international nature.

Projects Department

35. This is responsible for managing external funds for the implementation of projects for strengthening the activities of the Procurator's Office to protect, promote, disseminate and teach human rights. It draws up the proposals for projects to be implemented within the Office and submits them for review and approval to the Office of the Procurator for the Protection of Human Rights.

Communications Department

36. This is responsible for handling the internal and external communications of the Office, drafting and disseminating its publications, managing and coordinating various activities with the other communication media, both national and international, and advising the other sections of the Office on communications matters. It advises the Procurator in his dealings with the media.

37. In the area of the promotion and teaching of human rights, the Salvadoran Institute of Human Rights (ISDEH) is divided into the educational resources section, the legal section and the library. The first is responsible for providing the entire population with education in human rights by means of panels, modules, courses or seminars and for providing in-service training for the staff of the Office of the Procurator. The legal section is responsible for conducting studies and analyses of bills, laws or decrees relating to human rights and submitting the respective reports to the Procurator. The library provides a specialized bibliographical information service on human rights for both internal and external clients; it contains journals, books, memoranda, news items and other materials related to human rights.

38. In the field of administration and finance, the Office has Departments of Personnel, Administration and Finance, which carry out the normal activities of administering the staff, property and other aspects of the Office, dealing with financial and budgetary matters and providing support for monitoring, transport and maintenance.

39. Bearing in mind that the principal function of the Office of the Procurator for the Protection of Human Rights is to protect human rights in all respects and to monitor the actions of the public administration, its work involves verification of violations by all State bodies and in specific areas in cases where the rights of children, women and older people and environment-related rights are infringed.

40. With regard to the protection of the human rights of older people, the respective Deputy Procurator and the area offices receive complaints of violations of the human rights of older people in accordance with the classification of such violations used by the Office of the Procurator. In such cases, the complaint is recorded, the violation is investigated, or the necessary assistance and guidance are provided. In the specific case of violations of the social security system for older people, the Office has intervened in response to complaints by groups of pensioners of the Salvadoran Social Security Institute, the Public Employees Pensions Institute, the Salvadoran Armed Forces Welfare Institute, pensioners of the National Telecommunications Administration (ANTEL), of the National Water Supply and Sewerage Administration (ANDA) and of the Protection Fund for Injured and Disabled Persons Affected by the Armed Conflict, and elderly parents who are entitled to benefits in respect of dead combatants; in all these cases, the relevant investigations were carried out, assistance or guidance was provided in order to prevent the violations from continuing and the situation was resolved through the good offices of the Procurator. The other heading under which a number of complaints are received concerns the ill-treatment of older people; such cases are investigated and inspections carried out, after which the family court or the corresponding authority is requested to order the appropriate precautionary measures in order to protect the physical and moral integrity of the older person; on other occasions, the Office works with non-governmental organizations (NGOs) such as FUSATE and Asilo Sara Zaldívar in order to provide elderly adults with the assistance they need.

Summary of the report of the Office of the Procurator for the Protection of Human Rights

41. See annex 2, "Informes de labores junio 96-mayo 97". 1/

Judicial decisions: cases in which compensation (indemnification) has been awarded for violation of the right to food, housing and health and other rights recognized in the Covenant

42. It must be pointed out that at the time of the examination of judicial decisions, and on the basis of the classified data held by the Supreme Court of Justice, there is not a single case in which the Covenant has been used directly as a legal ground in support of the various decisions handed down by the Constitutional Division. It should be borne in mind that the number of cases examined in this respect is very small, and it is possible that the Covenant may have been used by ordinary courts but that the cases concerned were not submitted to the Constitutional Court.

43. It must be noted, however, that the majority of the rights set forth in the Covenant are recognized in the Constitution, and it is on the basis of their express mention in the latter instrument that complaints are heard in the Constitutional Division.

44. Consequently, the report presented below concerning compensation, or rather indemnity, is directly based on the provisions of the Constitution. It is presented under several headings: the first section concerns employment matters and details the most notable cases of 1997 in which the constitutional safeguards were upheld. The second, although it does not strictly speaking refer to indemnity, may be of assistance in that it concerns a historical judgement on the elimination of discrimination between children. The third part, also concerned with equality, is useful in regard to the way in which minors should be treated after they have committed offences. The fourth, although it concerns a judgement handed down in a commercial field within the jurisdiction of the constitutional court, provides a "very generic" indication of the role played by health in the interpretation of the constitutional provisions.

(a) Employment rights

(i) In the case Eduardo Benjamin Colindres v. Legislative Assembly (judgement 44-C-96 of 4 November 1997), Mr. Colindres, a judge of the Supreme Electoral Court, was removed from office by the Legislative Assembly. The Constitutional Division upheld the safeguards in respect of violations of his right to a hearing and his right to tenure in his post; it ordered that matters should return to the state that obtained previously, specifying that the immediate effect of the judgement was to reinstate him in the post of tenured judge; it also ordered that he should be paid the salary he had not received up to the date of the judgement and ruled that a criminal indemnity action for damages could be brought against the State.

(ii) In the case Eulogio de Jesús Payés v. Ministry of the Interior and Public Security (judgement 18-G-95 of 10 October 1997), Mr. Guerra Payés, Commissioner of the National Civil Police, was removed from office by the Minister of the Interior and Public Security. The Constitutional Division upheld the safeguards in respect of the petitioner's right to a hearing on removal from office. Since reinstatement was not possible, it ordered that he should be paid the salary he had not received up to the date of the judgement. The Division also ruled that a criminal indemnity action for damages could be brought against the official responsible, and an ancillary action against the State.

(iii) In the case Orlando Calderón v. Hydroelectric Board of Río Lempa (judgement 14-C-93 of 17 September 1997), Mr. Calderón, a technical adviser, was removed from office. The Constitutional Division upheld the safeguards in respect of violation of his rights to continuity in the post and to the preservation and protection of employment. Since reinstatement was not possible, it ordered that he should be paid the salary he had not received

up to the date of the judgement. The court also ruled that a criminal indemnity action for damages could be brought against the officials responsible for the removal from office, and an ancillary action against the State.

(iv) With regard to the case Orlando de Sola Wright v. Rulings of the President of the Republic (judgement 190-197 of 11 December 1997), Mr. de Sola, superintendent of electricity and communications, was removed from office. The Constitutional Division upheld the safeguards in respect of violation of his rights to a hearing and to continuity in his post. It ordered his immediate reinstatement and payment of unpaid salary.

(v) In the case Adán Zaldaña Navarro v. National Water Supply and Sewerage Administration (ANDA) (judgement 3-Z-96 of 18 June 1997), Mr. Zaldaña was given verbal notice of dismissal. In its ruling, the Constitutional Division ordered him to be paid the unpaid salary and awarded damages, directly and personally against the responsible official, and an ancillary claim against the State.

(vi) In the case Alonso Figueroa Quintanilla and Germán Alberto Benítez v. Board of Directors of the Salvadoran Institute for Cooperative Development (judgement 5-F-95 of 15 May 1997), the former, a promotion officer for the cooperative movement, and the latter, an auditor, were removed from office. The Constitutional Division upheld the safeguards in their favour, and since it was not possible to reinstate them it awarded them payment of their unpaid salaries up to the date of the judgement and ruled that a criminal indemnity action for damages could be brought against the responsible authority and an ancillary action against the State.

(vii) In the case René Mauricio Girón Peréz v. Ministry of Labour and Social Welfare (judgement 21-G-96 of 7 May 1997), the petitioner worked as an office manager. The Constitutional Division upheld the safeguards in respect of violation of the right to occupy a post and the right to a hearing, and ordered payment of unpaid salary from the time he was deprived of his employment up to the date of the judgement. It did not order the reinstatement of the applicant, but awarded damages directly and personally against the person responsible, and an ancillary claim against the State.

(viii) With regard to the case Mario Salomón Lopéz Zaldaña v. National Sewerage and Water Supply Administration (ANDA) (judgement 7-L-83 of 18 March 1997), the Constitutional Division upheld the safeguards for the applicant, an office assistant, in respect of violation of the right to a hearing on being deprived of employment. Since reinstatement was not possible, the court ruled that he should be paid the unpaid salary up to the date of the judgement. It also ruled that a criminal indemnity action for damages could be brought against the officials responsible for the violation, and an ancillary action against the State.

(ix) With regard to the case Guido Alfredo Escrich v. Ministry of Labour and Social Welfare (judgement 2-E-96 of 13 March 1996), Mr. Escrich was a labour inspector at the time of his removal from his post. The Constitutional Division upheld the safeguards in respect of violation of the rights to a hearing and to work. It ordered payment of his unpaid salary up to the date of the judgement, since reinstatement of the claimant was not possible; it also awarded damages, directly and personally against the responsible official, and an ancillary claim against the State.

(x) Finally, in the case Hugo Alberto Macal v. Ministry of Labour and Social Welfare (judgement 44-M-96 of 12 February 1997), the applicant was an office manager. The Constitutional Division upheld the safeguards in respect of violation of the rights to a hearing and to work. It ordered payment of unpaid salary up to the date of the judgement, since reinstatement of the claimant was not possible; it also awarded damages, directly and personally against the responsible official, and an ancillary claim against the State.

(b) Family rights

In the case Eduardo Calderón de la Cruz v. Civil Court of First Instance, Court of the First Section of the Centre and Civil Division of the Supreme Court of Justice (judgement I-C-94 of 29 September 1995), the Constitutional Division ruled that the children enjoyed equality, whether or not they were legitimate. It ruled that the preference given to legitimate children with regard to inheritance from the father's estate was contrary to the Constitution.

(c) Protection of minors

In judgement 15-96/16-96/17-96/19-96/20-96/21-96/23-96 (acum) of 14 February 1997, the Constitutional Division declared article 22 of the Emergency Transitional Powers Act against Delinquency and Organized Crime to be unconstitutional, since it made minors subject to the same treatment as adults.

Social security regime for older people. Specific protection: policies, institutions, protective legislation

45. Protection and assistance policies for elderly persons or older people by the Salvadoran Social Security Institute (ISSS) are incorporated within the National Plan of the Central Government of El Salvador as protection for priority groups, such as children, women, older adults and elderly persons. They have to be coordinated in order to supplement the programmes aimed at younger persons so that the latter may look forward to an old age which is as healthy as possible and with the minimum of diseases preventable by procedures involving preventive medicines.

46. It should be noted that in El Salvador 20 per cent of persons over the age of 60 receive some form of assistance or pension from a social security institution.

47. According to the national census of 1992, there were in El Salvador 378,527 persons aged 60 or over, distributed in the following manner:

Table 1

Persons aged 60 or over in El Salvador a/

Population estimates and projections 1995-2005	
Age	Total
60-64	134 960
65-69	111 605
70-74	82 244
75-79	54 510
80 +	41 483
TOTAL	424 802

a/ Information for 1998.

Table 2

ISSS: Total contributors and old-age pensioners

Year	Total contributors	Old-age pensioners
1990	494 465	11 318
1992	580 613	14 480
1993	741 662	17 639
1994	894 000	23 816
1998	879 316	NA

NA: Not available.

48. It is important to emphasize the increase in the number of persons covered by ISSS since 1990. This has been accompanied by an even greater increase in the number of older people: e.g. 894,000 in 1997 and a projected figure of 879,316 in 1998. The figures for persons in receipt of a pension are 11,318, 14,480, 17,639 and 23,816 for the years 1990, 1992, 1993 and 1994 respectively.

49. This trend is due, inter alia, to improvements in health systems, which have increased life expectancy at birth, the decrease in illiteracy, improved methods of diagnosis and therapy, and the social security system which was instituted in 1954 to deal with the risks and needs of the contributing population, thereby helping to provide social welfare.

50. In our country, ISSS develops social security programmes in the areas of health and pensions, which are founded on normative principles, the social policy of the State, a legal framework and a financial/economic basis, which has been designed to make possible the operation and development of each of these programmes. In this way, two protective systems are in operation: health and pensions. At present, 15 per cent of the total population are covered and there are three types of pension: disability, old age and death. ISSS provides subsidies, pensions relating to occupational hazards, burial assistance and benefits in kind such as layettes and milk (source: Commentaries on the financial-economic basis of the ISSS welfare programmes, May 1996).

51. The ISSS health insurance system comprises two financial regimes: the ordinary annual distribution for the sickness and maternity branch, and the distribution of coverage capital for the occupational hazard branch.

52. The ordinary annual distribution means that every year current income must be balanced against current outgoings, and so there is no formation of a technical reserve. However, it does enable funds to be established as a contingency reserve to cover temporary deviations. In the ordinary-risk pension insurance, the financial regime established is that of graduated premiums, in accordance with which time is divided into a series of periods of equilibrium; each period covers several years. A constant premium is established to guarantee financial equilibrium and permit accumulation of a reserve fund.

53. Contribution rates in force under the health system are as follows: 10.5 per cent for private companies and 9.35 per cent for the public sector (special health system). Under the system for disability, old age and death, the rate is 3.5 per cent: 2 per cent paid by employers, 1 per cent by employees and 0.5 per cent by the State.

54. As part of its policies, ISSS has to set basic objectives for the execution of programmes for older persons, and so short, medium and long-term planning is necessary. The care of older persons is incorporated within institutional policy, under which coverage of the contributing active population is increased; this will improve benefits for older persons in the future.

55. In order to meet the needs of elderly pensioners, ISSS began in 1998 to work with the Pensioners' Social Benefits Office, which is responsible for the following programmes:

(a) Recreational-educational;

(b) Establishment of pensioners' associations;

(c) Preparation for retirement;

(d) Protected workshops; and

(e) Individual home help.

56. In 1990, it began to work with the Gerontology Programme, run by the Preventive Medicine Department of the Health Division, which comprises:

(a) Establishment of regulations;

(b) Training;

(c) Supervision;

(d) Promotion of health and gerontological preventive care;

(e) Evaluation and diagnosis of diseases.

57. ISSS deals with the problems which most frequently affect this group of ISSS contributors. It has been found that the demand for medical care among this group is high: the average figure for general medicine is approximately 14 per cent, for the various specialized medical fields it is about 20 per cent. And this group accounts for 28 per cent of admissions to the Hospital Médico Quirúrgico y de Especialidades.

58. The Government of El Salvador has initiated a far-reaching reform of the pension system, which was characterized as having one of the lowest coverages in Latin America, reaching approximately 25 per cent of the economically-active population and offering, in most cases, pensions that hardly met the basic needs of an older person. In this connection, the fundamental objectives of the reform were as follows: to ensure that future generations of pensioners receive better benefits than those currently received by Salvadorans who have completed their working life; and to facilitate the incorporation in the new social security system of workers in sectors which under the old system were not legally entitled to join it and thereby enjoy the benefits it offered. It should also be emphasized that another of its objectives was to forestall the financial crisis facing the existing social security institutions in the medium term, and thereby ensure that their income would be sufficient to meet their obligations to pensioners and their administrative costs.

59. To this end the reform process led to the adoption by the Legislative Assembly, in December 1996, of the Pension Savings System Act, which constitutes the legal framework for the establishment and functioning of a new social security system based on an individual capitalization and savings model. In addition, the Act establishes new conditions of operation for the public pension system, which will continue to be administered by the existing social security institutions. They will continue to have the fundamental obligation of administering the contributions of workers affiliated to them and to pay the benefits established by law to contributors who fulfil the requirements for receipt of a pension.

60. One of the main characteristics of the new savings system for pensions is that the State delegates to private companies the administration of workers' pension funds. Under this system, Pension Fund Administering Institutions (AFPs) are set up as companies whose sole purpose is precisely to administer the individual savings accounts for the pensions of their contributors, and to pay the benefits established by law. In this connection,

every worker will have his own exclusive savings account in which his monthly contributions and those of his employer will accumulate; these funds are invested with the aim of generating interest, which is credited to his account, so that throughout his working life each worker will accumulate savings that will enable him to finance a pension at the time of retirement or in the event of his death or disability.

61. The pension savings system gives workers the freedom to choose the AFP which will manage their individual account, and when they become entitled to a pension, they will have the freedom to choose the form of pension most suited to them, according to their individual circumstances.

62. It is also important to emphasize that the Pension Savings System Act establishes a number of improvements in the operation of the existing public pensions system, especially for Salvadorans already in receipt of a pension and those who are about to become senior citizens and will shortly be entitled to receive a pension. These improvements include the following benefits:

(a) Minimum pension raised from 550 to 700 colones;

(b) Every year the Ministry of Finance will adjust the minimum pension payable to pensioners;

(c) Widows of former members of the National Pensions Institute for Public-Sector Employees (INPEP) will be entitled to continue to receive health services under the ISSS after the death of their husbands;

(d) Workers affiliated to the ISSS and INPEP who under the Act must continue to be contributing members of these institutions will be entitled to pension calculations with better percentages than those currently established in the laws which set up the institutions. In addition, they will receive the benefit of alternative calculations for their average earnings, with the aim of granting them the greatest possible benefit.

63. It may thus be seen that the Pension Savings System Act introduces improvements for current pensioners by raising the minimum pension and embodies a governmental commitment periodically to adjust the amount of the minimum pension; considerable improvements are also made for Salvadoran workers nearing retirement under the new conditions of operation of the public pension system and also through the entry into operation of the new system, which will enable future generations of retiring workers to enjoy greater benefits and a better quality of life.

Number of women holding positions of authority in the National Civil Police (PNC) and the Salvadoran armed forces. Percentage of total personnel or members. Diplomatic service

64. At present, the National Civil Police (PNC) has 15,453 officers, of whom 716 or 4.63 per cent are women. Of these 716, 12 are deputy commissioners, 17 deputy inspectors, 53 sergeants, 75 corporals and 599 ordinary policewomen. According to their rank, they hold the posts of regional commander, station commander, deputy commander, departmental

commander or operational area commander or unit commander, or engage in administrative or operational duties in the various facilities (see annex 3 for a more detailed outline).

65. As is apparent from these figures, the percentage of female officers within the total police force is low. On this point, the PNC has not made a direct response, merely stating that women officers have joined the force after passing competitive examinations held by, and hence graduating from, the National Academy of Public Security.

66. Another factor in this low percentage could still be the predominant mindset of Salvadorans, since the work of public security has mostly been done by men. However, the situation is gradually changing and the PNC is accordingly placing emphasis on the importance of encouraging women to take jobs as police officers.

67. As to the Salvadoran armed forces (FAES), the following figures have been provided:

Sex	Number	Percentage
Female	21	1.08 per cent

68. This figure indicates the number of women holding officer rank in the armed forces and not total female personnel, which is 2,041, or 10.5 per cent of total personnel.

69. As to the diplomatic service, the Foreign Service is made up of 275 persons, of whom 125 hold diplomatic status and 150 are technical or administrative personnel. El Salvador has two women ambassadors: one in Venezuela and one serving as Head of Mission in Paraguay. It also has 18 women consuls-general. The number of women holding the following diplomatic ranks are as follows:

First secretary:	1
Second secretary:	2
Third secretary:	3

Minimum percentage of capital to be invested by foreigners when establishing an undertaking

70. In accordance with article 3 of the Act regulating the Exercise of Commerce or Industry (Decree-Law No. 279 of March 1979, published in Diario Oficial No. 60, also of March 1979), foreigners wishing to establish a commercial undertaking are required to invest the following minimum amounts of capital:

(a) Undertakings of individuals engaging in commerce: 100,000 colones;

(b) Undertakings of individuals engaging in industry or the provision of services: 50,000 colones;

(c) Undertakings of legal persons engaging in commerce: 200,000 colones;

(d) Undertakings of legal persons engaging in industry or the provision of services: 100,000 colones.

71. Foreigners may establish an individually-owned undertaking (natural person) or a corporately-owned undertaking (through a company). In the latter case they may set up a Salvadoran company or they may establish a branch of a parent company set up in accordance with the laws of third countries, which in our legislation is known as a foreign subsidiary. In both cases, they must comply with the minimum amounts of capital mentioned above.

72. Foreign companies are regulated under articles 358 et seq. of the Commercial Code (Decree Law No. 671 of May 1970, published in Diario Oficial No. 140 of July 1970). In a national company, capital may be composed entirely of foreign investment, but a single person, whether natural or legal, Salvadoran or foreign, may not hold all the shares, since by law a company must be composed of two or more persons (Commercial Code, art. 20).

73. The articles relating to foreign companies are reproduced below:

"Article 2. The following are considered to be traders:

I. Natural persons owning a commercial undertaking, who are known as individual traders;

II. Companies, which are known as traders with capital stock. They shall be legally assumed to be engaging in commerce when they are the subject of advertising or when a commercial establishment dealing with the public is opened.

Foreigners or companies set up in accordance with foreign legislation may engage in commerce in El Salvador subject to the provisions of this Code and other laws of the Republic.

...

"Article 358. A company established in accordance with foreign legislation may engage in acts of commerce in the Republic provided that it:

I. Proves that it is legally constituted, in accordance with the law of the country in which it was established;

II. Proves that, in accordance with that law and its own statutes, it is able to set up branches or agencies in accordance with the requirements of this Code, and that the decision to operate in El Salvador has been validly taken or that it has the legal capacity to transfer its domicile to El Salvador and that it has taken a valid decision for that purpose;

III. Has permanently in El Salvador at least one representative with broad powers to undertake any acts which may have to be performed and produce effects in El Salvador;

IV. Establishes sufficient capital resources for the purpose of the commercial activity to be undertaken in El Salvador. These resources may be reduced only if the requirements for the reduction of share capital and the authorization provided for in the final paragraph of this article are complied with;

V. Proves that all its purposes are in conformity with national legislation and that, in general, it is not contrary to public order;

VI. Declares that it will comply with the laws, courts and authorities of El Salvador in connection with the acts which it undertakes in Salvadoran territory or which produce effects therein.

The above requirements shall be met vis-à-vis the authority exercising State supervision, which shall report to the Office of the Secretary for Economic Affairs. The latter may, if it considers such action appropriate, grant authorization for the company to engage in commerce in El Salvador. In this case, it shall set a time limit for the company to begin operations and shall order it to be entered in the commercial register of the place in which it sets up its head office.

"Article 359. The Office of the Secretary for Economic Affairs shall rescind the authorization if the company does not begin operations within the time limit set for that purpose or if it finds that it no longer complies with any of the requirements laid down in the preceding article.

In both cases the capital resources existing in El Salvador shall be liquidated by the bank designated for this purpose by the above-mentioned Office, in accordance with the provisions established in the relevant agreement.

"Article 360. Companies established in accordance with foreign legislation and operating in El Salvador shall be deemed to be domiciled in the place where, with the requisite authorization, they establish their head office.

"Article 361. Foreign companies which have branches or agencies in El Salvador and which engage in banking, insurance or savings operation or, in general, any operations involving work with money belonging to the public shall be obliged to invest in El Salvador the mathematical reserves and contingency reserves proceeding from contracts which they place in El Salvador, and also the percentages of clients' deposits which they have in the country and which the law authorizes them to invest.

The Office exercising State supervision shall be obliged, periodically, to ascertain whether this provision is being complied with. Non-compliance shall entail the cancellation of the operating permit, with immediate effect.

The Department of Public Prosecutions shall be obliged to require the corresponding administrative authorities to comply with the provisions of this chapter."

Policies, laws, measures and institutions providing care to disabled persons (work with non-governmental organizations)

74. The national policy for the integrated care of disabled persons, laid down in 1994, is understood as "the various measures established by the State with the aim of solving the specific problems of disabled persons, and also securing orderliness, harmony, consistency and coordination of activities which strengthen the efforts of governmental and non-governmental institutions, disabled persons, their families and civil society in general, for the purposes of prevention, rehabilitation and full participation in social activity and development in conditions of equality".

75. Its objectives include:

(a) General objective: To promote effective nationwide measures, strategies and mechanisms aimed at the prevention of disabilities and the complete rehabilitation, full participation and equality of opportunities of disabled persons, for the purpose of their integration in the family and society and the economic and social development of the country, based on effective respect for their human rights.

(b) Specific objectives:

(i) To prevent disabilities through the early detection of their causes, and thereby reduce the incidence of deficiency, incapacity and disability;

(ii) To include the various types of services for complete rehabilitation in economic and social development plans, programmes and projects executed in urban and rural areas;

(iii) To execute in coordinated fashion at the governmental, non-governmental and entrepreneurial levels all activities aimed at the full integration of disabled persons in the life of the country;

(iv) To promote the full and equitable participation of disabled persons, with opportunities equal to those of the population as a whole, in the improvement of their quality of life, as a factor contributing to social and economic development;

(v) To decentralize the provision of complete rehabilitation services to all regions of the country, both urban and rural, in order that they may be accessible to all persons in need of them;

(vi) To facilitate the reincorporation into the life of the country of persons disabled by warfare, through the formulation and implementation of a national strategy for the integrated care of persons disabled by the armed conflict which ended in January 1992; and

(vii) To guide and train the families of disabled persons, in order that they may become participatory and positive agents in complete rehabilitation.

76. In addition to the establishment of this policy, there is the National Council for the Integrated Care of Disabled Persons (CONAIPD), which is the body responsible for executing the policy and is made up of representatives of both governmental and non-governmental institutions.

77. The governmental plan of the Ministry of Public Health and Social Assistance (1994-1999) includes the following objective: "To improve mental health and the rehabilitation of the population as an option for integrated and sustainable human development with equity, efficiency and full community participation."

78. The intergovernmental institutions responsible for executing this plan is the Disabled Persons Rehabilitation Institute (ISRI) which has the following functions:

(a) Promoting the prevention of disabilities at the national level;

(b) Contributing to the provision of integrated rehabilitation and empowerment services for disabled persons with efficiency, effectiveness and equality;

(c) Adapting the legal, structural, organizational and functional framework to governmental policies for the modernization of institutions;

(d) Initiating research in order to improve the quality of care for users;

(e) Reorienting care programmes towards development of users' potential; and

(f) Promoting awareness with a view to the full social participation of disabled persons with equality of opportunity.

79. The legislation governing the Institute is the Health Code (sect. 48) and the 1961 Act establishing it.

80. Other legislation enacted for the benefit of this group includes:

(a) Decree No. 247, which stipulates that every employer or institution is required to recruit one disabled person for every 50 employees;

(b) Act establishing the Fund for the Protection of Persons Injured or Disabled as a result of the Armed Conflict;

(c) Act for the Protection and Rehabilitation of Injured Armed Forces Personnel;

(d) Decree establishing the CONAIPD as a decentralized unit of the Ministerial Office of the Presidency, whose aim will be to establish and execute policies in the area of rehabilitation;

(e) Decree establishing the Regional Council for the Integrated Care of Disabled Minors, which is composed of representatives of the Central American region and has its headquarters in El Salvador. Its objective is to ensure that disabled minors receive educational care;

(f) Decree-Law No. 1040, "Transitional Act relating to improved certification of the deaths of combatants due to the armed conflict", and the extension thereof;

(g) Equalization of Opportunities Bill, which has been submitted to the Legislative Assembly for approval.

81. Governmental organizations providing care for disabled persons include:

(a) The Ministry of Public Health and Social Assistance, through the various hospitals and clinics throughout the country;

(b) The ISRI, with its 10 branches: Sara Zaldivar Centre for Older Persons, Eugenia de Dueñas Centre for Rehabilitation of the Blind, Special Education Centre, Tomas Regalado Gonzalez Hearing and Language Centre, Motor System Centre, Multiple Invalidity Centre, Eastern and Western Integrated Rehabilitation Centres, Occupational Rehabilitation Centre and Cerebral Paralysis Centre;

(c) Salvadoran Social Security Institute (ISSS), only for its beneficiaries;

(d) Armed Forces Occupational Rehabilitation Centre, only for its beneficiaries. This institution manufactures prostheses, provides care and guidance for persons with head injuries, and runs an education programme on the after-effects of warfare on disabled persons and their families aimed at improving their quality of life, auxiliary appliance and accessory programmes, and return to work programmes. Disabled members of the armed forces are covered by the Armed Forces Social Welfare Institution Act, which has been in force since 1922.

82. Special mention may be made of the Fund for the Protection of Persons Injured or Disabled as a result of the Armed Conflict. This public-law institution was established as a result of the peace agreements through Decree-Law No. 416, as amended by Decree No. 183, published in Diario Oficial No. 325 of 30 November 1994, to help to alleviate the effects of the armed conflict, and in particular the situation of persons injured or disabled in that conflict, such as former members of the Salvadoran armed forces, former combatants of the FMLN, civilians, and parents and children of combatants who died as a direct result of the conflict.

83. The services recognized by this Act are of three kinds: (a) financial, such as cash payments, pensions, etc.; (b) in kind, such as prosthetic and orthopaedic appliances, medicines and mechanical aids; and (c) services of an assistance nature, such as medical, dental, surgical services, tests, etc.

Office of the Procurator for the Protection of Human Rights

84. In connection with policies, laws, measures and institutions for the care of disabled persons, the Office of the Procurator for the Protection of Human Rights has collaborated by lending its premises to enable members of the Fund for the Protection of Persons Injured or Disabled as a result of the Armed Conflict to receive documentation containing instructions on how to claim benefits. It has made its premises available in every department of the country. In addition, it has collaborated in this activity by providing information to beneficiaries on the days when Fund officials would visit the places in question and the documentation they needed to submit. They have participated in discussion meetings to seek means of speeding up the procedure for the receipt of documentation and the award of benefits to members of the Fund for alleged violation of human rights or illegal or arbitrary acts, generally involving delay in the award of pensions, lack of technical assessment for the determination of disability, freezing of pensions, withholding of information on whether or not members would receive benefits, etc. All over the country beneficiaries of the Fund are given assistance and guidance on the enjoyment of pensions or benefits about which they receive information. Requests are passed to the Fund, which responds by sending information and this in turn is forwarded to the person concerned. This has prompted the Procurator's Office and the Fund to establish a streamlined communication mechanism comprising general information meetings for the handling of benefits and the sending of information, such as lists of beneficiaries which are published for distribution to all offices. Information is passed to the beneficiaries, who receive guidance and assistance.

85. In this field, the Procurator's Office has interceded on several occasions through its good offices and verification procedure in very tense situations created by organizations of injured and disabled beneficiaries of the Fund at various demonstrations where they called for the payment of the benefits to which they were entitled and benefits for thousands of persons who were not recorded in the census and are accordingly not in receipt of such benefits or services.

86. Monitoring of the situation and the protection of disabled persons by the ISRI, and of the role of the Ministry of Health and Social Assistance in the rehabilitation of disabled persons has remained pending.

87. There have been cases of complaints by disabled persons at the withholding or refusal of disability benefits by the Salvadoran Armed Forces Institute, INPEP and ISSS.

88. Non-governmental institutions active in this field include:

(a) Pro-rehabilitation Telethon Foundation (FUNTER). The Foundation is an institution dedicated to the complete rehabilitation and care of

disabled persons through specialized clinical services and vocational training programmes aimed at placement in remunerated employment. In addition, the Foundation is involved in political matters, such as the drafting of the Equalization of Opportunities Act and the initiation of a regional project on accessibility: "Elimination of architectural barriers affecting disabled persons". The Foundation basically offers functional rehabilitation with physiological care, psychological care, physiotherapy, speech therapy, supply of prosthetic and orthopaedic appliances, and occupational rehabilitation. Its activities include:

(i) Integrated rehabilitation centre, established in 1989 with responsibility for providing medical, psychological, social, physiotherapeutic, occupational therapy, speech therapy and early stimulation services for patients with physical disabilities, facilitating their social and productive integration;

(ii) Prosthetic and orthopaedic appliance factory, established in 1988 with responsibility for the manufacture of prostheses for lower and upper limbs, and orthopaedic and prosthetic appliances;

(iii) PON programme, developing campaigns for the prevention and detection of deafness in school-age children; and

(iv) Occupational rehabilitation programme, whose objective is to provide occupational guidance services and to enable disabled persons of working age to obtain work.

(b) Salvadoran Institute to Promote the Organization of Disabled Persons (PODES). This Institute provides prosthetic and orthopaedic appliances, in particular to persons disabled as a result of the armed conflict, former combatants and civilians. Its policy is to give priority to the disabled population so as to enable them to obtain jobs created within the Institute, with the aim that they should become rehabilitation agents and in turn provide vocational training to their personnel as part of a high-quality service. The PODES would thereby become a private undertaking providing social benefit.

(c) "Progreso" Vocational Training Centre. This is a private centre which provides training in occupational areas in order to facilitate employment on the basis of the principle of equality of opportunities for disabled persons.

Positive and negative effects of privatization in the social sphere. Impact of the Government's modernization policies

89. The privatization of State enterprises in El Salvador began in 1991 and intensified from 1996 onwards, when the Presidential Commission for the Modernization of the Public Sector was established as part of the modernization process. The primary objective of this process has been to

redefine the role of the State in laying the foundations in El Salvador for the promotion and development of a market economy geared to achieving greater participation of private capital in national development.

90. In this context, the modernization of the public sector initially included the privatization of State enterprises as a strategic instrument for increasing the country's competitiveness, essentially through improvements in the efficiency, quality and coverage of services in the electricity, telecommunication, transport and water sectors. Privatization was also effected in order to release State financial resources and reassign them to priority needs of society in the areas of health, education and public security.

91. To achieve these objectives in general, and for each of the sectors, the modernization process has included the following activities:

(a) Design of statutory frameworks (legal and institutional), with clear and precise rules for stimulating the participation and competitiveness of private capital;

(b) Establishment of a regulatory body for services;

(c) Legal and organizational restructuring of some companies in an effort to achieve the most appropriate structure for creating conditions of competitiveness;

(d) Evaluation of assets and liabilities of companies which are candidates for privatization, review of financial statements, audits and appraisals;

(e) Establishment of new companies according to the type of industry desired for each sector, and transfer of assets from the autonomous institutions to these companies;

(f) Preparation of the technical information required by those involved in the privatization process; and

(g) Information campaigns aimed at strategic investors, the public at large and workers in companies liable to privatization.

92. To that end, as part of the modernization process, the Government decided initially to introduce privatization in the electricity and telecommunication sectors, together with modernization in the transport sector.

93. In order to achieve the foregoing, the Government has taken the following action to date:

(a) Throughout 1997 it promoted greater competitiveness in the local telephone market by signing two interconnection agreements with private telephone companies;

(b) The State telecommunication authority, the Administración Nacional de Telecomunicaciones (ANTEL), became a limited liability company (CTE-ANTEL) preparatory to being sold in mid-1998;

(c) At the beginning of January 1998, the electric power companies making up the Comisión Ejecutiva Hidroeléctrica del Río Lempa (CEL) were auctioned off at a price of $586.1 million in a successful operation representing the first privatization exercise in the electricity sector and the first of its kind in Central America;

(d) Progress has been made in formulating legal and institutional frameworks for the establishment of a water authority and a regulatory body for aqueducts and sewers, and proposals have been made for deregulation and private participation in the air and maritime transport sectors.

94. The present Government has taken these initiatives with the aim of creating a modern State which will promote private investment in a few State enterprises, with an efficient job creation programme.

Positive effects of the privatization process

95. The privatization of the CEL electric power companies, which took place in January 1998, led to a successful sale generating a total of $586.1 million, significantly higher than the starting price. Six enterprises with international experience in electric power supply (all in excellent financial condition) submitted tenders, and the four companies for sale were awarded to three of the participating firms, a situation which fosters competition in this sector.

96. A modern regulatory framework was formulated for the sale process and approved by the legislature, thus demonstrating the progress made by El Salvador in the economic, social and democratic spheres. This drew world recognition and boosted confidence in foreign investment in El Salvador.

97. The new companies which own the electric power companies will make investments to expand and modernize electric power distribution and broaden coverage, which will result in higher quality of service. The resources obtained through the sale of the electric power companies will improve El Salvador's economic growth, strengthen its macroeconomic stability and competitiveness, and encourage savings and investment. Likewise, the legislative decision to allocate these resources to short-term debt service will enable the country to make significant savings on amortization.

98. The resources derived from privatization also release resources which enables the Government to attend more efficiently to needs in the health, education and public security sectors, which currently account for 40 per cent of the national budget. Since taking office, the present Government has been substantially increasing spending in these areas with the aim of enabling Salvadorans to enjoy a better quality of life.

99. The income from privatization increases the level of international reserves, which leads to greater exchange stability and helps increase direct foreign investment flows to El Salvador.

100. The privatization process is being conducted at minimum social cost: the privatization of ANTEL, for example, involved compensation in the order of 453 million colones for its 5,000 workers and the immediate rehiring of 99.98 per cent of those workers by the new company, CTE-ANTEL, for a period of one and a half years. These privatizations have not led to job losses.

101. The privatizations of CEL and ANTEL were designed in such a way as to distribute share capital among employees, strategic partners and private shareholders through placement of shares on the Salvadoran stock market.

102. The presence of strategic partners of world-recognized financial liquidity guarantees El Salvador competence and sufficient advanced or appropriate technology in the electricity and telecommunication sectors.

Goals of the privatization process

103. To ensure that the macroeconomic benefits of the process resulting from adequate integration of economic and social policies and regulatory frameworks lead to sustained benefits for Salvadorans in terms of employment and wages.

104. To optimize the State's subsidiary role and, if possible, bring this into a demand context rather than a supply context.

Specific situation with regard to employment and unemployment

105. The Ministry of Labour states that the data on the current situation and trends in employment and unemployment and other variables concerning the labour market have been partially based on the "multi-purpose household survey" conducted and published annually by the Data-Processing Division of the Department of Statistics and Censuses, a branch of the Ministry of Economic Affairs.

106. Statistical tables Nos. 1, 2 and 3 (in annex 4) 1/ illustrate the situation with regard to employment and unemployment. The Ministry notes that the latest survey published covers the year 1996 and contains the most recent official data concerning the labour market. The tables and data provided in response to this question have therefore been taken from that document. The data for 1997 are currently being processed; however, the following table contains some preliminary data on the subject:

	Rates	
Area	Employment	Unemployment
Total	92.02	7.98
Urban	92.54	7.46
Rural	91.26	8.74
Metropolitan	92.57	7.43

Source: Ministry of Economic Affairs, Social Information Division, Multi-purpose household survey 1997. Preliminary data.

Statistical data, unemployment rates and unemployment trends by sector (manual labour, agriculture, etc.). Unstructured labour or informal sector

107. The survey was conducted at the national level using a sample of 10,000 households (6,000 urban and 4,000 rural), arranged in a random selection in three stages, with probability proportional to size. The survey findings take the form of estimates based on expansion of the data compiled, with sampling error of approximately 3 per cent, which may increase according to the level of disaggregation of the information being analysed. In other words, the more disaggregated the data, the higher the probability of error.

108. As to the question whether the unstructured or informal sector is considered, it should be stated that this sector has in fact been included, and appears in annex 5, together with the following tables: table containing general information by area; overall employment rate; economically active population with social security; unemployment rate by area; persons employed in market segments (formal and informal); persons employed in the three main economic sectors; nominal and real minimum wages by area; persons employed by branch of economic activity; persons employed by occupational category. The methodology used for the employment indicators is that suggested by ILO, which covers the informal sector.

Categories

109. Rate of unemployment or overt unemployment: Percentage of the economically active population which the production structure, given its dynamic, is unable to absorb in the production process.

110. Unemployed population: People of working age who are not working but are actively seeking employment.

111. Formal segment of the market economy: Comprises manual and clerical workers in enterprises with five or more workers, own-account workers and heads of enterprises with five or less workers who perform professional, technical, administrative or managerial functions.

112. Informal segment of the market economy: Comprises manual and clerical workers in enterprises with less than five workers, own-account workers and heads of enterprises with less than five workers who perform non-professioal, technical, administrative or managerial functions.

Calculation procedure

113. Unemployment rate: Ratio between unemployed population and economically active population, multiplied by 100.

114. Overall participation rate: Ratio between economically active population and the working-age population, multiplied by 100.

Employment policy of the Government of El Salvador

115. The labour policy set out in the 1994-1999 Government Plan of the Republic of El Salvador is described below.

116. Goals:

(a) To create a business atmosphere which will eliminate confrontational attitudes that hinder the creation of new jobs and jeopardize existing ones;

(b) To recognize as a fundamental principle the fact that there are no employers without workers and no workers without employers: each is dependent on and necessary to the other;

(c) To understand and assimilate the fact that the main adversary is outside El Salvador and is called global competition;

(d) To raise awareness of the need for worker involvement in achieving progress smoothly, through higher productivity levels and the production of high-quality goods and services that will enable El Salvador to be more competitive;

(e) To train workers fully for the globalization of the economy.

117. Objectives:

(a) To strengthen the labour market by expanding opportunities for training, employment, and access to resources, technical assistance and labour organization;

(b) To promote labour mobility and the right to work;

(c) To improve workers' purchasing power by increasing productivity;

(d) To make aggressive efforts to reduce unemployment levels and expand opportunities for improving the income of the underemployed;

(e) To improve labour relations.

118. Strategy:

(a) Establish forms and mechanisms for fostering understanding and more harmonious relations between manual and clerical workers and employers;

(b) Seek information about the experiences of other countries throughout the world in building harmonious labour relations while meeting the challenges of globalization;

(c) Full observance of the Labour Code;

(d) Commit the public sector to the training of Salvadoran workers;

(e) Conduct systematic evaluations of the labour market situation and prospects, in order consistently to adopt appropriate labour policy measures.

119. Policy measures:

(a) Objective 1: To make aggressive efforts to reduce unemployment levels and expand opportunities for improving the income of the underemployed;

Measures:

(i) Establish full relations with, and give support to, workers' organizations in determining mechanisms for developing worker compensation formulas that are commensurate with the average economic productivity resulting from greater labour efficiency and thus enable them to have an equal share in the enjoyment of economic growth (1995-1996). Authority responsible: Ministry of Labour.

(ii) Link the restructuring of labour training supply with the plant transformation process and revise the formal and informal training system for human resources (1995-1996). Authority responsible: Ministry of Labour.

(b) Objective 2: To strengthen the labour market by expanding opportunities for training, employment, and access to resources, technical assistance and labour organization.

Measures:

(i) Expand and improve technical and financial assistance to the economically active rural population, through government programmes and subsidiary financing, and participation by private individuals and NGOs (1995-1996). Authority responsible: National Reconstruction Secretariat (SRN), Banco de Fomento Agropecuario, Banco Multilateral de Inversiones.

(ii) Training in labour organization and collective bargaining for workers and employers in the various branches of production, aimed at establishing workers' solidarity organizations. Authority responsible: Ministry of Labour.

(iii) Expand and strengthen the regulations relating to vocational training (1996). Authority responsible: Ministry of Labour, National Council for Science and Technology (CONAYCT).

(iv) Establish a legal framework for the promotion of training workshops and on-the-job training, while ensuring conditions of service and compensation which do not impede training possibilities for young people, and which avoid abuses and improper actions against individuals or inappropriate working conditions (1996). Authority responsible: Ministry of Labour.

(c) Objective 3: To promote full mobility and the right to work.

Measures:

(i) Establish mechanisms to ensure strict compliance with the Labour Code (1995-1996). Authority responsible: Ministry of Labour.

(ii) Encourage solidarity between workers and employers through campaigns publicizing the benefits of solidarity and support for the organizations established for that purpose (1995-1996). Authority responsible: Ministry of Economic Affairs, Ministry of Labour.

(iii) Modernize the legal and administrative framework for public employment in order to make recruitment more flexible and encourage productivity (1996). Authority responsible: Ministry of Labour.

(d) Objective 4: To improve workers' purchasing power by increasing productivity.

Measure:

Design and implement a vocational training programme organized by NGOs and trade unions, and orient it on the basis of periodic market studies (1995-1996). Authority responsible: Ministry of Economic Affairs.

(e) Objective 5: To improve labour relations.

Measure:

Modernize the Ministry of Labour in order to enable it to respond adequately to the demands of a modern and dynamic world (1995-1996). Authority responsible: Ministry of Labour.

Policy in the free zones

120. The free zones are considered to be instruments of investment-promotion and export-promotion policies. Their primary objective is to create the conditions necessary for sustainable economic and social development in El Salvador by establishing development poles in strategic areas aimed at achieving economic and social recovery, increasing direct and indirect employment opportunities so as to improve living conditions, ensuring the effective transfer of technology, attracting national and foreign investment in these areas, and diversifying the economy through the incorporation of new and productive technologies.

121. In order to attain this objective, the Government of El Salvador constantly reviews the legal and institutional framework by means of which the above-mentioned conditions are established. The following measures are currently being taken:

(a) Reform of the Act relating to the Free Zone and Privileged Tax Area Regime, to incorporate the principles considered to represent the best international practices under the new international economic order in this sector. The main objective of this measure is to maintain a modern legal framework which responds to the current economic and social situation by helping to consolidate our economic and commercial liberalization process, and thus facilitating investment and trade;

(b) Review and adaptation of the procedures for obtaining administrative authorizations, with the aim of reducing requirements and the time taken for this purpose, and thus decreasing the cost of doing business for investors and improving the investment climate in El Salvador.

122. There are six free zones in El Salvador, within which 47 companies operate. These sources of labour create jobs in different branches, with clothing plants accounting for 85 per cent, and have a positive impact on employment in general, as each direct job is expected to create two indirect jobs.

123. Approximately 42,000 workers are known to be working in companies in the free zones.

124. The wages paid in these companies are equal to or greater than the statutory minimum wage of 38.50 colones a day; for administrative staff and staff in positions of responsibility and other senior posts, they are higher than the statutory minimum; overtime is paid in accordance with the Labour Code.

125. The working day is generally 8 hours from Monday to Friday and, exceptionally, 4 hours on Saturdays. On the authorization of the Department of Labour, certain companies work 9 hours from Monday to Thursday and only 8 hours on Fridays in order to provide two consecutive days of rest on Saturdays and Sundays, and thus enable workers to spend more time with their families. Different work schedules are possible, as follows:

<u>First option</u>:

Monday to Thursday:	7 a.m.	to	12 noon
	1 p.m.	to	5 p.m.
Friday:	7 a.m.	to	12 noon
	1 p.m.	to	4 p.m.

<u>Second option</u>:

Monday to Friday:	7 a.m.	to	12 noon
Saturday:	7 a.m.	to	11 a.m.

126. The main benefits enjoyed by workers include weekly rest, annual leave, breaks and bonuses.

127. In-bond assembly plants located in free zones and privileged tax areas represent the fastest-growing industrial sector and the one which has made the most significant contribution to employment by greatly reducing informal or alternative employment.

128. In conformity with article 49, final paragraph, of the Constitution, it is incumbent on the State to promote conciliation and arbitration as effective means of bringing about the peaceful settlement of labour disputes, and to institutionalize dialogue and economic and social cooperation between the governmental authorities and employers' and workers' organizations. In fulfilment of this constitutional mandate, Executive Decree No. 37 established the Inter-Agency Commission for the Treatment and Prevention of Disputes in Companies in the Free Zones and Privileged Tax Areas. Its purpose is to examine economic and labour disputes between the owners of the free zones and free zone companies, take preventive measures and attempt to arrive at the most appropriate solution. It thus acts as a mechanism or device to which the parties may have recourse in periods of tension in the workplace in order to avert a strike, in addition to Ministry of Labour bodies such as the Department of Labour and the Labour Inspectorate.

Forecasts of unemployment in the public sector when the Government's modernization and retrenchment process is completed

129. In this connection, we would make observations on the following:

(a) Trends among public-sector employees;

(b) Number of jobs eliminated;

(c) Number of jobs restored.

130. Institutions will conduct a technical analysis of their macrostructure or organizational units and review their skills, strategic objectives and microstructure, i.e. posts, to determine the optimum size of units and number of posts and, consequently, staff needed.

131. The Staff Performance Department is responsible for implementing the Human Resources Administration System; it analyses low performance and decides on action to be taken: training, relocation or dismissal.

132. One proposal being considered by the Human Resources Administration Modernization Programme is the preparation of a labour adjustment plan to prepare persons displaced from the sector for reintegration into private enterprise or own-account work, so that they do not create an additional social problem.

133. The trend in the number of jobs has been a decrease of 1 per cent a year. Decree No. 471 eliminated approximately 14,500 jobs, which have not been restored.

Trends in public-sector employment. Number of jobs eliminated and restored

134. Job movements at the three levels making up the non-financial public sector, divided in accordance with the preceding sectors are described below.

Central Government

135. During the period 1997-1993, the Government made changes in the structure of jobs, in accordance with new functions and emerging needs These consisted of administrative restructuring, strengthening institutions such as the National Civil Police and the National Secretariat for the Family, increasing staff for prisons, family courts, rural schools, medical and paramedical establishments, and competitiveness and modernization programmes and the establishment of the transport and environmental branches. These changes are summarized in table No. 3.

Table 3

Full-time jobs 1997-1998

Central Government

	1997	1998	Variation
New jobs	3 762	3 123	(639)
Jobs cut	4 970	4 252	(718)
Differential	(1 208)	(1 129)	79

Source: Wages Act, Budget Department.

Decentralized non-corporate institutions

136. The structure of employment in the three wage systems in the decentralized non-corporate sector was affected by Decree-Law No. 471 of 12 October 1995 (Temporary Act relating to Financial Remuneration for Services Provided in the Public Sector). However, this was offset by the creation of new institutions, including 15 new hospitals, the Salvadoran Institute for the Development of Women, the Salvadoran Tourist Board, the Energy and Telecommunication Authority, the Securities Supervision Department and the Technical Executive Unit, and by the inclusion in the budget of a number of existing institutions such as the Salvadoran Municipal Development Institute and the Social Investment Fund.

Table 4

Full-time jobs 1997-1998

Decentralized non-corporate institutions

	1997	1998	Variation
New jobs	2 397	886	(1 511)
Jobs cut	790	416	(374)
Differential	1 607	470	(1 137)

Source: Wages Act, Budget Department.

Public enterprises

137. The increase in the number of jobs in enterprises during 1997 was due to new contracts in ISSS and in the Autonomous Executive Port Commission. The jobs created in ISSS were for paramedical and nursing staff and emerged from the establishment of local corporate clinics, and from the decentralization of the pensioners' health service; those in the Port Commission arose out of the growth in port and airport services due to the expansion of infrastructure and new services. These trends can be seen in table 5.

Table 5

Full-time jobs 1997-1998

Public enterprises

	1997	1998	Variation
New jobs	777	425	(352)
Jobs cut	302	1 388	1 086
Differential	475	(963)	(1 438)

Source: Wages Act, Budget Department.

Annex 6 1/ shows job trends by institution over the period under review.

Text and comments on article 291 of the Penal Code relating to forced labour

138. Article 291 of the old Penal Code defined hindering or abandoning public services as a punishable offence. With the entry into force of the new Penal Code on 20 April 1998, that offence was abolished.

139. In fact, the new Penal Code aims to increase the protection of labour rights and defines the following offences:

Title IX

Socio-economic offences

Chapter IV

Offences relating to labour rights and the right of association

Offences relating to working or social-security conditions

Article 244. Anyone who, by means of fraud or by exploiting a situation of need, subjects his employees to working conditions or social-security conditions that jeopardize, abolish or restrict rights recognized under legal provisions or in individual or collective work contracts shall be liable to a prison sentence of between six months and two years.

Withholding union contributions

Article 245. Any employer who withholds workers' funds, contributions, subscriptions or accounts due by law to the State or to social-security, welfare or trade-union institutions, during three of the periods established by the relevant legislation, shall be liable to between 100 and 300 days' fines.

Discrimination at work

Article 246. Anyone who causes serious discrimination at work on grounds of sex, pregnancy, origin, civil status, race, social or physical condition, religious or political ideas, membership or non-membership of trade unions or trade-union agreements, or family ties with other workers in the company, and who does not restore a situation of equality before the law, in accordance with any orders or administrative sanction, providing redress for any financial injury that might have resulted, shall be liable to a prison sentence of between six months and two years.

Coercion in the exercise of the freedom of association or the right to strike

Article 247. Anyone using coercion to prevent another person from exercising his freedom of association or the right to strike or stop work, or to impair those rights, shall be liable to a prison sentence of between one and three years.

The same penalty shall be imposed on anyone acting in a group to coerce others to strike or continue a strike, stoppage or withdrawal of labour.

Obstruction of freedom of contract

Article 249. Anyone obstructing or preventing the free contracting of labour shall be liable to a prison sentence of between six months and one year.

Title XXII

Offences relating to public health

Chapter II

Offences against health and safety in workplaces and health or study centres

Violation of health and safety measures

Article 248. Anyone so obliged who does not take the necessary steps to ensure that workers carry out their activities in the required conditions of health and safety, or violates the regulations on the prevention of work hazards, seriously endangering workers' health and safety, shall be liable to between 50 and 100 days' fine.

The same penalty shall be incurred by anyone who does not observe health, safety or hazard prevention measures in public or private health or education centres.

Title XIV

Offences relating to the fundamental rights and guarantees of the individual

Chapter I

Fundamental rights and guarantees of the individual

Violations of the right of association and assembly

Article 294. Any public official or employee or agent of a public authority who, other than in cases provided for by law, dissolves or suspends a legally constituted association, trade union, society or cooperative, or obstructs its legal activities, shall be liable to a prison sentence of between one and three years and suspended from his position or job for the same period.

The same penalty shall be imposed on anyone preventing or obstructing the formation of such a group.

Information on training centres for clerical and manual workers

140. See annex 7: 1/ Regulations concerning the accreditation of business training units; regulations concerning the accreditation of programmes and recognition of participating centres; institutions accredited as participating centres as of April 1998; Business Training Units (UCEs).

Comparative levels of remuneration in the public and private sectors

141. Annex 8 1/ includes tables of average wages by sector, sex, occupational group and economic activity, taken from the 1997 multi-purpose household survey.

Wage and salary differences between men and women

142. In accordance with Decree No. 68 of 21 July 1995, which is still in force, the minimum wage set in 1993 does not differentiate between men and women. In practice, however, the latest official data from the 1996 multi-purpose household survey reveal differences within the labour market. For a better understanding of the situation, comparative tables of average monthly wages and incomes for the whole country - by sex, years of schooling completed and branch of economic activity - are attached in annex 9. 1/

143. These tables show a difference in men's and women's earnings in favour of men. This difference is still apparent even when the level of education is the same. In other words, it exists between persons with no education and between persons with more than 13 years' education.

Statistics on work-related accidents and occupational diseases. Types of accidents and diseases

144. Statistics are given below on work-related accidents and occupational diseases for 1997. They are based on the records of the various ISSS health-care centres relating to the risks mentioned.

145. There were 29,194 work-related accidents in 1997, in an economically active population of 577,333, which means that about 5.05 per cent of workers sustained accidents while at work. The 29,194 accidents reported may be broken down by economic activity as follows:

(a) Manufacturing: 13,502, or 46.25 per cent of the total;

(b) Construction: 6,461, or 22.13 per cent;

(c) Commerce: 4,852, or 16.62 per cent;

(d) Other: 15 per cent.

146. These figures show that it is in economic activities in which the hands are used as a work tool that the greatest number of accidents happen to workers in the course of their daily activities. Cuts from sharp objects are the first cause of injury to the hands, followed by injuries to the forearms and lower limbs.

147. The statistics on occupational diseases are characterized by under-reporting: a technically sound diagnosis requires proof of cause and effect, a relationship that it is frequently not possible to demonstrate. A

diagnosis of an occupational disease can only be confirmed with the approval of a doctor specializing in occupational health and will depend on the results of medical tests.

148. The information given in the report on daily consultations at the national level show that 304 occupational diseases were diagnosed, but these diagnoses were not confirmed by the occupational health service. Given that a number of factors may aggravate, trigger or create a predisposition to common diseases, the diagnosis of work-related or occupational diseases is open to question, which explains why they are under-reported.

149. According to ISSS estimates, the most common work-related diseases are respiratory tract problems, such as pneumoconiosis, and deafness resulting from noise levels at work. Annex 10 1/ shows work-related accidents by kind of injury and type of accident, and work-related accidents by cause and type of accident.

Minimum health and safety conditions in workplaces

150.

	1993	1994	1995	1996	1997
Health and safety inspections and re-inspections of workplaces	1 676	1 262	1 168	1 362	2 080
Health and safety incidents in workplaces	164	345	102	76	257

Role of labour inspectors in the free zones. Workplace inspections in general

151. The Ministry of Labour, through the Labour Inspectorate, implements a policy of regular inspections in order to prevent labour disputes and to help generate in employers a greater respect for workers' labour rights and in workers an understanding of their duties towards the enterprise in question.

152. The role of labour inspectors is to prevent labour disputes by monitoring respect for labour rights, and to establish areas of agreement in employer/employee relations. Workplace inspections, whether official or resulting from a complaint by workers, involve verifying compliance with labour legislation.

153. Under article 38 of the Labour and Social Welfare Sector (Organization and Functions) Act, labour inspectors have the following powers:

(a) To enter any workplace subject to inspection, during working hours, freely and unannounced;

(b) To question, alone or in the presence of witnesses, employers, emloyees and union leaders, as required, on any matter concerning the implementation of legal provisions;

(c) To order payrolls, receipts and other employment-related documents to be produced, and to copy or take extracts from them;

(d) To carry out any official investigation or examination that may be deemed necessary in order to further the aims of the inspection, and to use the most appropriate methods in order to obtain an accurate picture of the facts to be verified;

(e) To order the posting of any notices required by law;

(f) To set reasonable time limits for making good any violations noted and, in the event of imminent danger to workers' health or safety, to order immediate action to be taken; and

(g) To take any other action that may be stipulated by law and governed by the provisions of article 39 of the Act.

154. The inspection of a workplace may be called for in two situations:

(a) Scheduled inspections, i.e. those included in the monthly schedule drawn up by the competent supervisory authorities, the aim of which is to establish that legal provisions are being complied with and to eliminate dangers in the workplace;

(b) Special or unscheduled inspections, made in order to check specific points reported by workers or employers and require immediate, urgent verification.

Status of article 74 of the Labour and Social Welfare Sector (Organization and Functions) Act, which is at variance with the right to freedom of movement within or through Salvadoran territory, to choose work, or to leave or enter the country

155. This article relates to contracts concluded with Salvadoran workers for services to be provided outside the country; it has never been seen as an impediment to the exercise of social rights. On the contrary, it has always been considered a very sound way of providing guarantees to Salvadoran workers taking up offers of work abroad that are fraudulent or do not meet the conditions laid down in national legislation.

156. The provision may appear to impair fundamental rights to some extent, particularly that part of it stipulating that the migration authorities shall not permit contracted workers to leave the country until their contracts have been approved by the Ministry of Labour and Social Welfare. But this limitation is felt to be essential in order to guarantee labour rights, and the provision's real intent is to give the Ministry some control over foreigners who come to the country to offer work. Once they have been authorized to do so, the contracts they conclude are submitted to the Ministry for approval, with the following conditions:

(a) The workers concerned must be over 18;

(b) The contracted workers' travel expenses to and from the place where they are to work must be paid by the employer; and

(c) The employer must post a bond in an amount sufficient, in the Ministry's judgement, to cover the workers' repatriation costs.

157. In short, this provision is not regarded as violating workers' fundamental rights; on the contrary, it is intended as a safeguard.

Reasons for the non-ratification of ILO Conventions Nos. 98 and 87

158. According to the Ministry of Labour, the Government of El Salvador has not yet adopted or ratified ILO Conventions No. 87 concerning Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Right to Organize and to Bargain Collectively.

159. The ILO Constitution, in article 19, paragraphs 5-7, refers to the obligation of ILO members to submit the Conventions and Recommendations adopted by the Conference to the competent authorities, and states:

"5. In the case of a Convention:

(a) the Convention will be communicated to all Members for ratification;

(b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;

(c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them."

160. It is important to draw attention to an ILO document entitled "Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities":

"II. EXTENT OF THE OBLIGATION TO SUBMIT

Article 19 lays down the obligation to place before the competent authorities *all* instruments adopted by the Conference without exception and without distinction between Conventions and Recommendations.

On the other hand, the obligation of governments to submit the instruments to the competent authorities does not imply any obligation to propose the ratification or application of the instrument in

question. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities."

161. Against this background, a number of provisions of the above-mentioned Conventions will now be discussed.

162. The first of the Conventions dealt with is that concerning freedom of association, and here it should be noted that ILO has a Committee on Freedom of Association, answering to the Governing Body, and also a Fact-Finding and Conciliation Commission on Freedom of Association, whose purpose is to encourage and monitor the implementation of legislation on freedom of association.

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize

163. Articles 2-5, 7, 10 and 11 of Convention No. 87 read as follows:

"Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

...

Article 7

The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of articles 2, 3 and 4 hereof.

...

Article 10

In this Convention the term 'organization' means any organization of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize."

164. In El Salvador, the right of association or, in other words, the right to form trade unions has been constitutionally recognized since 1950 and is currently established in article 47 of the Constitution, as follows:

"Article 47. Employers, private employees and workers, without distinction as to nationality, sex, race, creed or political convictions, and whatever activity or kind of work they perform, have the right to associate freely for the protection of their respective interests, by forming professional associations or trade unions. The same shall apply to workers in the autonomous official institutions.

These organizations shall be entitled to legal personality and to due protection in the exercise of their functions. Their dissolution or suspension may be ordered only in those cases and according to the formalities specified by law.

The special provisions for the constitution and operation of rural and urban professional and trade union organizations shall not restrict the freedom of association. Any exclusion clause shall be prohibited.

Members of trade union executives shall be Salvadorans by birth and, during the period of their election and term of office, and for a year after leaving office, they may not be dismissed, suspended for disciplinary reasons or transferred, and their working conditions may not be impaired, except for just cause previously approved by the competent authority."

165. This constitutional provision, which is similar to that contained in article 191 of the 1962 Constitution, is further developed in the current

Labour Code, of which Book 2 deals with collective labour law, title 1 deals with professional associations, and chapter 1 deals with the right to professional association and the protection of that right.

166. Beginning at article 204, the Labour Code covers the right of workers and employers to associate freely for the defence of their group interests. This right is subject, however, to a series of regulations whose aim is to prevent anarchy in such associations, while ensuring that facilities are available to constitute such associations, so that the principle of free association can be fully exercised. In addition, the intention of article 47, paragraph 3, of the Constitution is observed, in the sense that the conditions for the basis and form of the constitution and operation of trade union organizations cannot restrict the freedom of association.

167. A number of articles of the Labour Code deal with safeguards for the right of professional association, including, for example, article 205, which reinforces that right by prohibiting such actions as:

(a) Compelling another person to join or leave a union, except in cases of expulsion for a reason previously established in the statutes;

(b) Preventing another person from participating in the establishment of a union or forcing someone to do so;

(c) Discriminating against workers on the grounds of their union activities or taking reprisals against them on the same grounds;

(d) Taking action aimed at preventing a union from being formed or at dissolving it or bringing it under the employer's control; and

(e) Restraining in any way the legitimate exercise of the right of professional association.

168. Similarly, article 231 establishes penalties for employers who violate a union's right to exist, while articles 248 et seq. of the Code regulate the guarantees extended to members of trade union executives, as mentioned in article 47, paragraph 4, of the Constitution. It should be pointed out that the guarantees under the Code are extended to the executive members of unions that as yet have no legal personality but have taken steps to obtain such personality, and that they also cover the persons who form a union for a period of 60 days from the date on which the National Department of Social Organizations (Ministry of Labour and Social Welfare), at their request, notifies the employer or employers of their appointment. A further attempt to form a union may not be made until six months have elapsed since the previous attempt.

169. One exception in this case is that, even though workers in the autonomous official institutions have the right to form trade unions, this is not an absolute right since, according to the Labour Code, article 2, paragraph 2: "This Code is not applicable if the relationship between the State, municipalities and autonomous or semi-autonomous official institutions and their employees is public in nature or originated in an administrative act, such as appointment to a post specifically designated in the Wages Act as

financed by the general or special budgets of such institutions, or is designated in the municipal budgets, or if that relationship arises out of a contract for the provision of professional or technical services." This means that such civil servants do not enjoy the right in question.

Conclusions

170. The right to form trade unions in El Salvador is granted exclusively to employers, workers in the private sector and employees of the autonomous official institutions. The Constitution clearly does not grant public servants the right to form trade unions.

171. Convention No. 87 establishes this right for workers and employers without distinction whatsoever, and is therefore broader in scope than the corresponding constitutional provision.

172. Article 47 (final paragraph) of the Constitution stipulates that members of trade union executives "must be Salvadoran by birth". The Convention stipulates that organizations have the right freely to elect their representatives, without distinction whatsoever, which differs from the constitutional provision in question.

173. The extent to which the guarantees laid down in the Convention shall apply to the armed forces is a matter to be determined by national legislation. Articles 212 and 213 of the Constitution stipulate that the armed forces are obedient, professional and non-political, and shall not deliberate in matters of service, and that their structure, legal regime, doctrine, composition and functioning are defined by the law, regulations and special provisions which the President of the Republic may adopt. Thus the armed forces may not be subject to a regime other than that laid down in the Constitution.

Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively

174. The relevant articles of the Convention are transcribed below:

"Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to:

(a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

...

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

...

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way."

175. It should be noted in this connection that our legislation protects workers from manipulation by employers and that practised by trade unions in some cases against non-members, as described below.

176. In this connection, the Constitution states:

"Article 39: The law shall regulate the terms under which collective labour contracts and agreements shall be concluded. The stipulations contained in such contracts or agreements shall be applicable to all workers in the enterprises that sign them, even if they do not belong to the contracting union, and also to other workers who enter such enterprises while the contracts or agreements are in effect. The law shall establish the procedure by which working conditions in different economic activities may be made uniform, on the basis of provisions contained in the majority of collective contracts and agreements in force in each type of activity."

177. The last sentence of article 47, third paragraph, of the Constitution states: "Any exclusion clause is prohibited." Pursuant to this, article 277 of the Labour Code stipulates: "The collective labour contract shall not contain any exclusion clause; consequently, employers may hire or maintain in employment non-unionized workers, and no working conditions may be stipulated which are different from those provided for workers who are members of the contracting union. An exception shall be made for persons whose work justifies such action because of its scientific, artistic or technical importance."

178. A few of the legal provisions mentioned earlier in connection with Convention No. 87 also apply to this Convention. These include article 205 of the Labour Code, which reads as follows:

"Article 205: No person may

Compel another person to join or leave a trade union, except in cases of expulsion for a reason previously established in the statutes;

Prevent another person from participating in the establishment of a union or force him to do so;

Discriminate against workers or take reprisals against them on the grounds of their union activities;

Take action aimed at preventing a union from being formed or at dissolving it or bringing it under the employer's control;

Restrain in any way the legitimate exercise of the right of professional association."

Conclusions

179. Article 4 of the Convention states that appropriate measures shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation ... with a view to the regulation of terms and conditions of employment by means of collective agreements. This article makes the Convention difficult for El Salvador to ratify, as it obviously infringes or alters the will of the legislature as expressed in substantive principles of law enshrined in our Constitution and is therefore considered to be unconstitutional.

Peasants' need for housing, work and education. Current situation and Government policy

180. The Deputy Minister for Housing and Urban Development, working with the municipal governments, NGOs and the community, is implementing a government programme entitled "Human settlements". The programme's goal is to help low-income families to purchase a plot of land, thereby fostering legally-established settlements "in the public interest and for progressive development". The programme also helps strengthen municipal governments through the allocation of financial resources to cover part of the service demands created by the new settlements.

181. The programme is aimed at families living on municipal, State-owned or private land, involving negotiations between landowners, the community and the municipal government, or families who have been relocated, through the "new organized settlements" programme, to the above-mentioned land because they had previously been living in high-risk areas, on rights of way, in ecological or archeological reserves or on private property.

182. The programme also enables recipient municipal authorities to take action when disasters significantly damage the homes of the very poor, by immediately providing the affected families with materials for infrastructure work and hence enabling them to continue living in their homes on a provisional basis.

Programme rules

183. The design of settlements must conform to the Urban Planning and Construction Act and provide for adequate access points, appropriate plot sizes, green areas for recreation or social infrastructure, and protected areas for rivers, ravines and other natural resources.

184. The programme provides for guidance to families making up the communities, on the use of appropriate resources for cooking and on observance of Ministry of Health regulations for the management of underground and surface watercourses, the management of excreta and domestic waste, reforestation, preservation of green areas for recreation, and protected areas for rivers and ravines. Services will be allotted in accordance with the area's resources and the Urban Planning and Construction Act, and efforts will focus on helping the community to make rational use of resources.

185. The programme is being conducted in the 14 departments of the Republic, in municipalities which need to resolve their population's housing needs, possess land suitable for housing that has been or may be registered under the community's name, or comprise private property designated as being in the public interest. Beneficiary families must be in the extreme-poverty category and an agreement must be concluded between the municipality, the community and the owner of the land if he is a private individual.

186. The programme is aimed at poor families living in minimal housing conditions and in high-risk areas, on rights of way, in ecological or archaeological reserves or on private property, persons over 18 years of age, and persons who belong to a family unit with an income of less than two monthly minimum wages when they can prove that the family has no assets and have expressed a desire to purchase a plot.

187. For information on education, see annex 11. 1/

Report of the Social Investment Fund (FIS) on peasants in a situation of extreme poverty

188. The poverty map used by the Social Investment Fund for Local Development divides the population into urban and rural categories and places inhabitants in one of the following three strata: absolute (or extreme) poverty, relative poverty and non-poor. The rural population is composed of peasants and is characterized by widespread absolute poverty. Persons living in this situation number 672,391, or 26.46 per cent of the total rural population and 13.13 per cent of the total population of El Salvador.

189. The population in a situation of extreme poverty is considered to be the population group whose income does not cover the cost of a basic food basket meeting minimum nutritional needs. The cost of a basic food basket is equivalent to a monthly income of $132.45 (exchange rate 1 dollar = 8.72 colones), which is the minimum wage in El Salvador. See annex 12. 1/

Relationship between minimum wage and basic food basket

190. "Basic food basket" means the basic products which make up the population's usual diet in sufficient quantities to cover at least, the energy needs of an individual.

191. The basic food basket is used as an indicator for setting the minimum wage, although the minimum wage does not equal the exact value of a food basket. In July 1995, for example, when the urban minimum wage was set at 1,155 colones, the cost of a food basket was 1,037.70 colones, and so the minimum wage was higher.

192. It is important to remember that the value of a basic food basket varies with the prices of the products it contains. Thus, when inflation is negative, as it was in the last months of 1997, the value of the basket drops; when inflation is positive, it increases. The value of the minimum wage remains stable until it is revised by the National Minimum Wage Board.

193. The relationship between the minimum wage and the basic food basket is established in articles 145 and 146 of the Labour Code, which state:

> "Article 145. In setting the minimum wage, account shall be taken primarily of the cost of living, the type of work involved, the different systems of remuneration, the different areas of production and other similar criteria.
>
> Article 146. In determining the cost of living, consideration shall be given to ordinary expenditure on food, clothing, housing, education and protection of health, for an average working-class rural or urban family".

194. Thus the basic food basket is a valuable reference tool for establishing minimum wage levels for urban and rural areas. The gap between the minimum wage and the cost of a basic food basket is due to the fact that, although the cost of a basic food basket is a valuable reference tool for establishing the minimum wage, it is not the only factor taken into account. The following are also considered important: prices of national and exportable goods; purchasing power of wages; sector growth; competitiveness of national and foreign products; employment and unemployment levels; productivity level; level of the national economy in general, etc. Consequently, in many cases the minimum wage turns out to be lower than the cost of the basic food basket, since analysis of the above-mentioned factors indicates that enterprises are unable to pay a higher wage than that established and that if they were to do so, they would either have to reduce staff or cease operating altogether. This would lead to an increase in unemployment and adversely affect the national economy.

Information on the workers' solidarity movement

195. The Salvadoran Constitution contains extensive provisions regulating the right of association; all the country's inhabitants have the right to associate freely for any lawful purpose (Constitution, art. 7). Workers' solidarity associations are not prohibited under the Constitution, but the

Constitution invests trade unions with the exclusive right to defend workers' interests. The unions are entitled to legal personality and to be duly protected in performing their functions.

196. The provisions governing the protection of trade unions are contained in the Labour Code. Salvadoran labour legislation prohibits the organization and operation of mixed trade unions, defined as unions "comprising employers and workers" (Labour Code, art. 207), and stipulates that trade unions are responsible for "concluding collective labour contracts and agreements" (art. 228 (a)). The Labour Code grants trade unions the exclusive right to conclude and modify collective contracts. It is therefore obvious that Salvadoran legislation does not permit workers' solidarity associations to represent workers or defend their interests.

197. El Salvador has no legal instrument exclusively governing solidarity associations, such as Costa Rica's Solidarity Associations Act. A law relating to non-profit associations and foundations was recently enacted, governing associations which do not seek financial gain for their members, such as NGOs. Solidarity associations which do not pursue financial gain could be established under this law; associations for profit would come under the regulations relating to commercial enterprises in the Commercial Code or the General Act relating to Cooperative Associations. However, there are no official data on solidarity associations entered in the Ministry of the Interior's register of non-profit associations and foundations or the Commercial Register.

198. In order to obtain legal personality, trade unions must register with the Ministry of Labour and Social Welfare (Labour Code, arts. 219 et seq.). The Labour Code does not give solidarity associations the possibility of registering officially as workers' organizations with this Ministry.

199. From another standpoint, it has to be said that the solidarity movement is not a significant or even visible phenomenon in El Salvador. In 1992, the Inter-American Regional Organization of Workers, the western hemisphere branch of the International Confederation of Free Trade Unions, stated that there were only three enterprises in which solidarity organizations existed. This is quite a low number, and in any event the organization itself accepted the fact that solidarity associations had not succeeded in developing in El Salvador. To the Government's knowledge, there have been no national or international complaints of attempts to thwart or impede union activity by workers' solidarity associations. In other words, it has to be said that the solidarity movement has no influence or prospects in El Salvador and that it has not caused any kind of problem for the development of the Salvadoran trade union movement.

200. There are in fact no studies of Salvadoran trade union organizations which indicate that solidarity associations even exist in El Salvador or that such organizations have actually harmed the development of Salvadoran trade unions. The Government of El Salvador respects the designation of trade union organizations as the only entities empowered to represent the workers' interests, as established in the Labour Code.

Labour Code provisions governing night work and overtime

201. Night work is governed by articles 161-170 of the Labour Code, which basically stipulates that night work is that performed during the period from 7 p.m. one day until 6 a.m. the next. Night work may not exceed 36 hours a week. Any work comprising more than three and a half night hours is considered to be a night shift. Dangerous or unhealthy work, according to the definition of the Social Welfare Department, may not exceed 6 hours a day or 36 hours a week. And finally, work performed during night hours must be remunerated at a rate at least 25 per cent higher than equivalent work during daytime hours.

202. Regarding overtime, article 169 of the Labour Code stipulates that all work verified as having been performed outside normal working hours shall be remunerated at a rate 100 per cent more than the basic hourly wage; overtime may in any event only be worked on an occasional basis, when special circumstances so require. Companies which work on a 24-hour basis, however, may require one hour of overtime work on a permanent basis, to be performed during the night shift; the labour contract may also stipulate one hour of overtime work per day for the sole purpose of replacing the four hours of the sixth working day. In all the above cases, the employer must submit the labour contract and regulations governing working hours to the Department of Labour for approval. It should be added that the minimum wage, which is used as a basis for all the above calculations, is set by the National Minimum Wage Board at least every three years.

203. Below are the articles relating to this subject as they appear in the Labour Code:

> "Article 161. Working hours shall consist of day shifts and night shifts. Day shifts are worked during the period between 6 a.m. and 7 p.m. on the same day; night shifts are worked between 7 p.m. one day and 6 a.m. the next. An ordinary work shift, with the exceptions specified by law, shall not exceed eight hours for a day shift or seven hours for a night shift. A work period consisting of more than four night hours shall be considered to be a night shift for the purposes of its duration. The working week shall not exceed 44 hours including day shifts and 39 hours including night shifts.
>
> Article 162. In the case of jobs which are unhealthy or dangerous, working hours shall not exceed 7 hours a day or 39 hours a week for daytime work, or 6 hours a day or 36 hours a week for night work.
>
> For the purposes of this article, a work shift which includes more than three and a half night hours shall be considered a night shift for the purposes of its duration.
>
> Dangerous or unhealthy jobs are defined in articles 106 and 108. In case of doubt as to whether a job is dangerous or unhealthy, the assessment of the Department of Social Welfare shall be followed.
>
> Notwithstanding the provision contained in the first paragraph of this article, the heads of firms in which work classed as dangerous or

unhealthy is performed may request authorization from the Ministry of Labour and Social Welfare to work in accordance with the provisions laid down in the preceding article. Such authorization shall be granted following an advisory opinion by the Department of Social Welfare stating that such firms use appropriate safety and hygiene systems and equipment in the performance of their activities, and that occupational hazards are the responsibility of management and have not been frequent. The authorization in question shall be revoked if the above-mentioned conditions are altered in any way.

Article 163. Effective working time is considered to be all the time during which the worker is at the employer's disposal, and includes essential breaks for rest, meals or meeting other physiological needs during working hours.

Article 164. In special cases, working hours may be divided into up to three parts comprising no more than 12 hours, upon authorization by the Department of Labour.

Article 165. Employers shall initially set the working hours, but any subsequent changes shall be made in consultation with the workers. Disagreements shall be resolved by the Department of Labour, in accordance with the provisions of this Code, collective agreements and contracts, internal labour regulations, the nature of the work performed by the firm or, in the absence of these criteria, considerations of equity and common sense.

Article 166. When the work shift is not divided, the work period must include breaks to enable workers to eat and rest. These breaks shall be one half-hour in length; however, when breaks are not possible because of the nature of the work, the employer shall be obliged to allow the workers to eat without affecting the normal course of work.

In enterprises performing a public service such as railways, passenger transport, electricity supply and similar activities, the working hours shall be established by the enterprise, with a view to providing the best service or in conformity with the provisions established by the competent authority and the respective internal labour regulations, where appropriate.

Workers and employers engaged in work essential to the community may not conclude agreements stipulating working hours which are prejudicial to the community. For this category of services, working hours shall be approved by the Director of Labour.

Article 167. No less than eight hours may elapse between the conclusion of one ordinary work shift plus overtime and the beginning of the following shift.

Article 168. Remuneration for work performed during night hours shall be at least 25 per cent higher than for equivalent work during daytime hours.

Article 169. Any work verified as having been performed outside normal working hours shall be remunerated at a rate 100 per cent greater than the basic hourly wage, up to the limit established by law.

Remuneration for work whose performance extends beyond the ordinary working day because of acts of God such as fires, earthquakes or similar incidents shall consist solely of the basic wage.

Article 170. Overtime may be contracted for only on an occasional basis, when made necessary by unforeseen or special circumstances.

Without prejudice to the provisions of the preceding paragraph, in enterprises where work is performed 24 hours a day, one hour of overtime work may be required on a regular basis, to be performed during the night shift.

The labour contract may also stipulate one hour of overtime work per day, for the sole purpose of replacing the four hours of the sixth working day, to allow the workers two consecutive days of rest, Saturday and Sunday, each week.

In the cases referred to in the two preceding paragraphs, the approval of the Director of Labour shall be required for the agreement to be valid."

Reasons why public employees are denied the right to organize and to strike, whereas the State recognizes employees' associations and the Government negotiates with workers, even when strikes are declared illegal

204. Article 47 of the Constitution establishes the right to organize for employers and private-sector employees; public employees are thus denied this right. In addition, the right to strike is expressly denied in article 221 of the Constitution.

205. The Ministry of Labour believes that public employees should be denied both rights because of the nature of the service they perform for the inhabitants of a country, i.e. a public service which, by definition, must be performed continuously. This continuity would clearly be broken by exercise of the right to strike. Another reason would be neglect of duty consequent upon a public employee devoting time to other activities (trade-union activities); customers or members of the public could be seriously incommoded.

206. It is nonetheless an undeniable fact that public and municipal workers seek to form associations to defend their interests, although not in the framework of the right to organize but in the form of civic associations, which are governed by the Civil Code and the Act relating to Non-Profit Associations and Foundations (Non-Governmental Organizations). Similarly, the Government is frequently unable to oppose the political and organizational power of these associations, so that in the whole history of El Salvador there has never been a single trial or conviction, individual or collective, for a violation of the above-mentioned legal provisions.

207. Although it is true that the State recognizes employees' associations in the public sector, it does so in the framework of freedom of association as established in the Constitution, and if it negotiates with them it does so for the reasons mentioned above.

Explanation of the difference between a public employee and a public-sector worker under Salvadoran legislation

208. Nowhere in the legislation of El Salvador is a distinction made between a public employee and a public-sector worker; these expressions are synonymous in all cases. However, confusion may arise from the provisions of the Civil Service Act, which is the legal and disciplinary statute governing public officials and employees, in the three branches of government as well as public corporations financed by government funds. Although the Act is universally applicable, it stipulates that officials and employees or junior staff specified in article 4 are subject to the jurisdiction of the ordinary courts rather than that of the Civil Service Tribunal with regard to the attribution of disciplinary responsibilities and imposition of penalties, in accordance with the Act relating to Guaranteed Access to Justice for Public Officials not belonging to the Established Civil Service and ordinary law.

Grounds for dissolution of a trade union

209. The grounds for dissolution of a trade union are contained in article 231 (2) of the Labour Code: "Dissolution may be ordered only in cases of extremely serious violation of the law or the Constitution", and in article 232, which reads:

> "Similarly, a trade union shall be dissolved:
>
> (a) When its membership has fallen below 35 for more than one year;
>
> (b) When it is legally impossible for the trade union to continue to exist, as in the case of closure of the firm, termination of work or similar cases; and
>
> (c) By decision of its members in conformity with the corresponding statutory rules."

210. In accordance with article 233 of the Labour Code, the dissolution of a trade union for any of the reasons mentioned above must be declared by the judge who is competent according to the ordinary rules, on the application of anyone who demonstrates that they have an interest in bringing such an action.

Mechanism or device for avoiding strikes during periods of labour unrest

211. A reply to this question must begin with a definition of a strike. According to article 527 of the Labour Code, "A strike is a collective suspension of work, agreed on by a majority of workers, for the purpose of obtaining a specific goal". Similarly, article 528 of the Code states which strikes are considered to be legal, as follows:

(a) Strikes whose purpose is the conclusion or amendment of a collective labour contract;

(b) Strikes whose purpose is the conclusion or amendment of a collective labour agreement;

(c) Strikes whose purpose is the defence of workers' common professional interests.

212. In the context of a legal strike, the Labour Code establishes, in article 480, mechanisms or devices for resolving a collective labour conflict of an economic character. The article reads: "Collective conflicts of an economic character or collective conflicts of interest shall be dealt with in accordance with the following stages:

(a) Direct negotiation;

(b) Conciliation;

(c) Arbitration;

(d) Strike or work stoppage".

213. These stages are interrelated, i.e. they must follow one another in the order in which they are listed. It may therefore be concluded that there is indeed a mechanism established by law for resolving labour conflicts short of a strike, and that a strike is the last resort for reaching a solution.

Number of work stoppages in El Salvador. Figures for strikes in the past five years

214. See annex 13. 1/

Number and structure of trade unions

215. Article 208 of the Labour Code recognizes the following types of trade union:

(a) Single-profession union;

(b) Enterprise union;

(c) Industry union;

(d) Union encompassing several enterprises; and

(e) Union of own-account workers.

216. According to article 206 of the Code, mixed unions, i.e. unions made up of workers and employers, are prohibited.

217. Article 211 states that 35 members are needed to form a trade union and that all employers are obliged to recognize and negotiate with any union comprising a majority of their workers.

218. Trade unions obtain legal personality in accordance with the provisions of the Labour Code, by registering with the Ministry of Labour and Social Welfare under the procedure set forth in articles 219 et seq. of the Code. In accordance with article 220 of the Code, trade unions are governed by their general assembly, which is in all cases the union's highest authority. Article 224 states that the executive shall be responsible for directing and administering the union. Unions are run by an executive, which may be either general or be responsible for a particular branch. The executive is composed of no less than 3 and no more than 11 persons in the first case and no less than 3 and no more than 7 persons in the second. Union members have full discretion and freedom in appointing members of the secretariat. There are currently 299 registered trade unions. Annex 14 1/ contains a list of active unions and leaderless unions registered to date.

Programmes for the protection of pregnant women

219. The Ministry of Public Health and Social Assistance has begun a National Maternal Health Programme which includes prenatal care, i.e. care during pregnancy, care during childbirth and post-partum care, in all health units and public hospitals throughout the country. In addition to care during pregnancy, the Programme provides for training of midwives by doctors in order to improve midwife-assisted births in a non-medical environment.

220. It should be noted that the level of maternal care coverage by the Ministry of Public Health is high according to the maternal care indicators for 1997 for the entire country: prenatal coverage, 59 per cent; hospital births, 45 per cent; post-natal coverage, 44 per cent and midwife-assisted births, 22 per cent.

Programmes for street children

221. The work of the Salvadoran Institute for the Protection of Children (ISPM), the government body responsible for specific policies for the protection of children with problems, including street children, focuses on the following areas:

(a) Formal and informal education;

(b) Humanitarian assistance;

(c) Programmes to combat drugs and alcoholism;

(d) Preventive health programmes; and

(e) Programmes aimed at eradicating prostitution.

222. The following are among the non-governmental institutions working with these types of children:

(a) Asociación Fe y Alegría;

(b) Fundación Nueva Vida Pro-Niño de la Calle;

(c) Olof Palme Foundation for the Protection of Children;

(d) Salvadoran Foundation for the Development of Women and Children;

(e) Oscar Romero Foundation for Abused Children in El Salvador;

(f) Association for Comprehensive Assistance to Children;

(g) Fundación la Sagrada Familia;

(h) Fundación Maquilishuat;

(i) Don Bosco Industrial Estate.

223. Another government project financed with international aid is the "Project on work, education and health for children", whose goal is to combat drug dependency among children and to assist abandoned children living in the street.

Measures taken by the Government to combat child labour

224. The efforts of the Government to combat child labour began in 1992, with the National Child Labour Programme, coordinated by the National Secretariat for the Family, the lead agency for national policy on children, women and the family, with the participation of NGOs. The programme was implemented by the Salvadoran Institute for the Protection of Children (ISPM), through its Preventive Care Division; it arose in response to a need to unify efforts by the Government and NGOs.

225. On the initiative of the Ministry of Labour and Social Welfare, El Salvador ratified ILO Convention No. 138 concerning Minimum Age for Admission to Employment on 14 July 1994. It was published in the Diario Oficial, No. 169, Vol. 324, on 13 September 1994 and entered into force as from that date.

226. In June 1996, the Minister of Labour and Social Welfare, on behalf of the Government, and together with his counterparts from the region, signed a memorandum of understanding with ILO, thereby strengthening action to combat child labour. At the present time the efforts of the Ministry of Labour and the Salvadoran Institute for the Protection of Children are being intensified, new areas of cooperation are being opened up and the full range of State services brought into operation in order to meet the challenge of eradicating child labour. The International Programme on the Elimination of Child Labour (IPEC) is being implemented through this partnership. To follow up the memorandum of understanding, President Armando Calderón Sol swore in the IPEC National Executive Committee in August 1997. The Committee is made up of representatives of the following institutions:

Governmental sector:

Salvadoran Institute for the Protection of Children;

Ministry of Labour and Social Welfare;

Ministry of Education;

Business sector:

Salvadoran Builders' Association (CASALCO);

Union of Agrarian Reform Cooperatives, and Coffee Producers, Processors and Exporters (UCAPROBEX);

Workers' organizations:

National Federation of Salvadoran Workers (FENASTRAS);

Salvadoran Federation of Independent Associations and Unions (FEASIES);

Non-governmental organizations:

Salvadoran Foundation for the Development of Women and Children (FUNDEMUN);

Salvadoran Foundation for Education and Employment (EDYTRA);

Corporation of Municipalities of the Republic of El Salvador (COMURES);

International Labour Organization (ILO), in an advisory capacity;

United Nations Children's Fund (UNICEF), in an advisory capacity.

227. The following are among the most significant activities undertaken by the members of the National Executive Committee:

(a) Revision of the draft decree establishing the Committee;

(b) Revision of the Committee's draft plan of work;

(c) Training in the area of eradication of child labour;

(d) Research on child labour and education coordinated by UNICEF and ISPM;

(e) Proposal for a Revised Programme of Action for Institutional Development and Direct Action concerning girl beggars;

(f) Proposal for a Revised Programme of Direct Action concerning child shellfish divers;

(g) Drafting of terms of reference for the National Plan: definition of child labour, dangerous work, age span, plan objectives, strategic areas of action, types of intervention, courses of action, periods of intervention, coordination, financing, management and follow-up of the plan;

(h) It should be noted that awareness of this subject is being raised through research in the areas of education and work, and children in high-risk activities, such as flame-throwers and scavengers. This research has been conducted at the initiative of ISPM and has focused on the following:

(i) Conditions of children and teenagers recycling the contents of rubbish dumps in Apopa, San Salvador metropolitan area (UNICEF-ISPM-CESTA), August 1997;

(ii) Child labour and education in El Salvador (UNICEF-ISPM), October 1997;

(iii) Research-action project on child beggars in the San Salvador metropolitan area, September 1997.

228. The Salvadoran Institute for the Protection of Children has conducted a Programme on the Eradication of Flame-throwers in San Salvador, through awareness-raising campaigns and assistance plans for the young people involved and their families in the areas of physical and mental health, vocational training, reintegration into the school system and promotion of education projects.

229. The Office of the Deputy Procurator for the Protection of the Rights of Children and Adolescents has sponsored research on "Farm labour by children in Chalatenango".

230. The National Secretariat for the Family, executing agency of the national policy for the care of children, has made a series of revisions designed to improve policy in several areas, especially that of child labour.

231. Among the NGOs conducting activities aimed at reducing child labour is the Instituto Tecnológico Obrero Empresarial Don Bosco, which is currently conducting programmes for children selling in marketplaces, begging, taking drugs and practising prostitution.

Penalties established by the Penal Code for domestic violence

232. One of the most innovative and revolutionary aspects of Salvadoran legislation is its treatment of domestic violence, an issue which was formerly played down as being an eminently private matter. As a result, one of the most important causes of social breakdown was neglected.

233. The Act relating to Action to Combat Domestic Violence entered into force in December 1996 in response to what was regarded as one of the most urgent needs of Salvadoran society and in fulfilment of the obligation entered into by El Salvador when it ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, or Convention of Belém do Para, in 1995. The Act is essentially preventive

rather than repressive in nature; article 4 stipulates that intervention by the authorities and measures taken in cases of domestic violence shall be without prejudice to any criminal liability which may be incurred for the same acts.

234. Article 3 defines the concept and forms of what is considered to be domestic violence, which include:

(a) Psychological violence;

(b) Physical violence; and

(c) Sexual violence.

235. Article 6 defines the objectives of the policies which the State should adopt to prevent, punish and eradicate domestic violence.

236. Article 7 contains the measures of protection to be taken for the prevention, punishment and eradication of the different forms of violence, for which the institutions responsible are listed in article 5. These include:

(a) Lower courts (police courts);

(b) Family courts;

(c) Department of Public Prosecutions;

(d) Ministry of Public Security; and

(e) Generally speaking, any governmental or non-governmental institution responsible for the protection of the family, women, children, and disabled or older persons.

237. Among the changes in the Penal Code which entered into force in April 1998 is article 200:

> "Article 200. Anyone who perpetrates an act of violence against his spouse or a person with whom he is cohabiting, or against his children or their children subject to parental authority, or his ward or a legally incapacitated person under his guardianship, or his ascendant relatives, shall be liable to six months' to one year's imprisonment."

238. It should be noted that although the violence in question constitutes a more serious offence such as bodily injury, the penalty corresponding to the more serious offence, rather than the one described in the preceding article, is imposed. The Legislative Assembly is currently studying the possibility of bringing the foregoing provision into line with the Act relating to Action to Combat Domestic Violence.

Summary of programmes for the elimination of domestic violence, and institutions which implement them

239. The Salvadoran Institute for Women's Development (ISDEMU) has a programme for the improvement of family relations which was set up on 17 March 1995 on the initiative of Mrs. Elizabeth de Calderón, El Salvador's First Lady, on the basis of an inter-agency agreement. This programme has made it possible to standardize criteria and to contribute to the modernization and efficiency of the State by putting an end to work in isolation and by eliminating duplication of activities.

240. The programme provides comprehensive care for members of the family in El Salvador, in order to forestall and help solve problems of domestic violence. It also contributes to the investigation of attacks on the lives, dignity and integrity of family members, with special attention to children, older persons and women. The programme is consistent with a principle of the Constitution: the family is the basis of society and the State has the obligation to protect it.

241. It is thus part of the Government Plan of the President of the Republic, Mr. Armando Calderón Sol. This Plan is intended to generate equal opportunities for all Salvadorans so that they can achieve full development as individuals and be an integral part of social progress and the progress of El Salvador itself.

242. The objective of the programme is to provide care for that part of the population subject to social aggression in terms of physical and mental health and social and legal assistance, and thereby contribute to the integration and strengthening of the family, thus achieving full personal development within the family.

243. The services offered by the programme are curative and preventive. The curative services provide:

(a) Care for all victims 24 hours a day and 365 days a year through the "family friend helpline";

(b) Immediate protection of the victim (within five minutes or less) on the scene of the attack, through a multidisciplinary team;

(c) Medical care;

(d) Legal assistance;

(e) Social assistance; and

(g) Psychological care.

The preventive services organize talks to publicize the programme, workshops and group sessions in the communities, and victim and aggressor therapy aimed at behaviour modification.

244. The Office of the Procurator for the Protection of Human Rights has played a role in the protection of the family along with the Deputy Procurators for the Protection of Women, Children and Older Persons.

245. The Office of the Deputy Procurator for Women investigates violence against women, and provides guidance and assistance to women, particularly in bringing cases before the family courts so that precautionary measures can be taken to prevent further violence. It then contacts other institutions for the purpose of securing comprehensive treatment for women who have suffered from domestic violence.

246. Training of various kinds has been provided for officials in the justice system - judges, procurators, officially appointed lawyers, National Civil Police and NGOs - on violence as a legal phenomenon and on domestic violence. A review was carried out of Decree No. 880 concerning the 30 per cent discount of the bonus awarded to government employees for their children. A gender-based investigation was made of the employment situation of women in the assembly industry. An active role was played by the Institute for the Protection of Women in the formulation of a national policy on women and in developing other aspects of the protection of women.

247. The programme of technical cooperation in the field of human rights, conducted by the Office of the United Nations High Commissioner for Human Rights, in coordination with the ISDEMU's programme for the improvement of family relations, has initiated several courses this year, including a course on the prevention, punishment and eradication of violence against women and children in accordance with human rights standards. Eight seminars were held between January and April, with an average of 160 participants per course. Those attending included members of the National Civil Police and personnel from public-sector hospitals, the Attorney-General's Office and the judicial system. It is planned to hold a further four courses between May and June this year. The technical cooperation programme includes support for ISDEMU in public campaigns against domestic violence and educational support for the Family Unit within the National Civil Police.

Training the National Civil Police and the armed forces to deal with domestic violence

248. The National Civil Police has a Family Unit, which is part of the Public Security Division and is responsible for organizing seminars and training on this subject in coordination with other institutions engaged in this task, such as the Salvadoran Institute for the Development of Women, the Office of the Deputy Procurator for the Protection of the Human Rights of Women, the Radda Barnen Technical Executive Unit and the Programme for Technical Cooperation in the field of Human Rights.

249. By way of illustration, tables showing training courses and seminars on domestic violence for serving personnel in the various police units are attached (see annex 15). 1/

250. The Ministry of National Defence informs us that programmes are organized periodically for armed forces personnel. The most recent programme, according to our information, was held from 28 October to 2 December 1997, with the participation of ISDEMU.

Causes underlying the failure to implement, or delays in implementing, agrarian reform as approved in the Peace Agreements

251. The Salvadoran Agrarian Reform Institute (ISTA) was designated as one of the executing agencies of the Land Transfer Programme, which was provided for in the Peace Agreements. It has specific responsibility for transferring State properties which were situated within the conflict zones, according to the land inventory prepared for the purpose, and the transfer of land exceeding the constitutional limit of 245 hectares, which is to go to landholders and former FMLN combatants and to demobilized armed forces personnel.

252. As regards the transfer of State properties which are not forest reserves, ISTA has transferred 68, with an area of 21,710 manzanas, to 4,691 landholders and former FMLN combatants, and 18 properties covering 2,752 manzanas to 687 former members of the armed forces. It has thus complied in full with its commitment to transfer State lands situated in conflict zones.

253. As regards the transfer of areas greater than 245 hectares, ISTA has implemented as a continuing activity articles 105 and 267 of the Constitution, and by December last year it had investigated 509 cases. Of these, following its technical and legal analyses, 72 properties have been purchased, 375 properties were not in excess, 31 were expropriated in phase I, 27 are being analysed and 4 have a total area of 4,299.24 manzanas. Nineteen properties have been transferred to 666 landholders and former FMLN combatants, 13 to 521 demobilized armed forces personnel, 14 to 1,039 special patrolmen and civil defence guards, 7 to 321 share-croppers, 14 to 771 landless peasants and 1 to the Ministry of Defence, while 5 properties have been classified as forest reserves.

254. As can be seen from the above, all the properties with excess land have been transferred to their beneficiaries. However, since this is a continuing measure, when further instances of excess land are declared they are also transferred to their beneficiaries.

Right to take part in cultural life and enjoy the benefits of scientific progress and the protection of copyright (article 15 of the Covenant)

255. On 13 April 1978, El Salvador ratified, through Legislative Decree No. 500, its accession to the World Intellectual Property Organization, (WIPO). It became a member of WIPO on 18 September 1979.

256. CONCULTURA has for the first time published a work entitled Estudios Lingüísticos (CONCULTURA, UCA Editores, San Salvador, 1997), which includes a study by an indigenous author, Mr. Genaro Ramírez Vásquez, Director of the Cultural Centre in Santo Domingo de Guzmán (Sonsonate). It has recognized his copyright and intellectual property rights.

257. The benefits of cultural and scientific programmes can be obtained mainly through the 125 cultural centres scattered throughout the country, and through books, radio, television, etc.

258. As regards the relevant paragraph of article 15 of the Covenant, the Ministry of Education would like to draw attention to the progress made in implementing its provisions. This progress is threefold: the dissemination of scientific information and the establishment of scientific institutions; the inclusion in school and university curricula of subjects and materials which encourage the development of science in El Salvador; and enjoyment of the benefits of scientific progress.

259. As regards the first area - the dissemination of scientific information and establishment of scientific institutions, noteworthy progress has been made with the establishment, by executive agreement of the National Council for Science and Technology, whose role is to promote the development and application of science and technology in the various spheres of national activity, such as education and popularization. Considerable encouragement from the Government has enabled it to be both highly efficient and effective in performing scientific activities in El Salvador, as can be seen from the results described in recent relevant documentation.

260. The dissemination of information includes the "Informativos educativos" (educational information supplements), which are intended to arouse interest in scientific matters in children, young people and adults. On weekdays and especially on Sundays, the newspapers with the largest circulations in El Salvador include whole pages containing scientific information, including information on experiments. Mention may be made of the series of articles entitled "Paper Birds", "geodata", "Simple experiments to do at home", and many more. There are also very important programmes on science and technology on radio and television; particular mention may be made of the programmes broadcast by El Salvador's Culture and Education Service, which regularly contain information on the latest advances in science.

261. As to the second area - the inclusion in curricula of subjects and materials to encourage the development of science in El Salvador - the following progress has been made. The national curriculum conforms to the constitutional mandate whereby higher education must combine the functions of teaching, scientific research and exerting a social influence "with the aim of contributing to economic, cultural and social development and growth through science and technology geared to improving the quality of life of the people of El Salvador". The same provision calls for higher-level institutions to promote basic and applied scientific research. The same goal is reflected in the Higher Education Act, which in article 2 (3) states: "Research is the systematic search for new knowledge to enrich science and society." Similarly, article 28 of the Act recommends that feasibility studies of higher-education centres should cover the following aspects: programmes and projects to be developed for purposes of research and their effect on society as a whole. Article 34 (d) postulates as a minimum requirement for the operation of higher-education institutions: "The implementation of at least one research project annually in the areas offered." This means that

higher-education centres are required to comply with the constitutional provisions concerning science, and that the national curriculum also requires higher-education graduates to have a strong commitment to science.

262. The curriculum for the different levels and forms of education includes various subjects which promote the development of science. Thus, for example, through mathematics the student is introduced to ideas of quantity and the magnitude of essential aspects in the development of the sciences. Similarly, the subject "Science, health and the environment" provides for the inclusion of graduated scientific knowledge appropriate to the child's psychological development. Special mention should be made of social and civic studies, which encourage scientific study of the country's social development.

263. As for educational material, there are school libraries, university libraries, a guide to population studies, guides to environmental education and computing centres in many primary and secondary schools and many other types of printed material contributing to the development of curriculum subjects relating closely to science and technology.

264. With reference to the third area, that of the enjoyment of the benefits of scientific progress, although it is true that there has been no scientific advance of any great note in El Salvador, this does not mean that no progress has been made in laying the foundations for a future in which the full development of the sciences can be envisaged. However, channels have indeed been opened in order to make the most of the scientific and technological progress achieved in other nations. For example, a Salvadoran can obtain up-to-date information about the latest scientific developments around the world since he has access to newspapers and other mass media. Moreover, in his home, he has access to the advances of modern technology, such as televisions, refrigerators, liquidizers, microwave ovens, videos, etc. There are also centres specializing in computing, programme management, the Internet, educational video, software; the latter three were introduced in 1998 in the country's educational establishments so that everyone can have their own computer equipment.

265. In some tourist centres use has been made of solar energy. Seeds have been improved in arable farming, and in stockbreeding experiments have been conducted in cross-breeding to increase herds and milk production. Bar codes have been introduced commercially, along with the 150 range of production standards. In industry, progress has been made in laying the fourdations for scientific development and a democratic area has been opened up for the enjoyment of worldwide scientific progress.